Quarterly Report

OF THE

ATTORNEY GENERAL

OF

ALABAMA

FOR THE PERIOD

FROM APRIL 1, 1979
THROUGH JUNE 30, 1979

CHARLES A. GRADDICK, Attorney General

VOLUME 175

SKINNER PRINTING COMPANY
INDUSTRIAL TERMINAL
MONTGOMERY, ALABAMA

CHARLES A. GRADDICK
Attorney General

LEE HALE
Deputy Attorney General

DON BEKURS
Executive Assistant

WALTER S. TURNER
Chief Assistant Attorney General

WILLIAM T. STEPHENS
Chief, Opinions Division

ASSISTANT ATTORNEYS GENERAL

Tom Allison
Milton Belcher
William J. Benton
Mark Brandon
Linda Breland
Jean Brown
Joe Carlton
Ed Carnes
Bob Carpenter
Wendall Cauley
David Clark
Sam Clenney
Larry Craven
Jack Curtis
Karen Daniel
Philip Davis
Jim DeBardeladen
Young Dempsey
Bill Espy
Beth Farmer
Kathryn Farnell
Dru Flowers
John Gibbs
Sally Greenhaw
Charles Guyton
Rosa Hamlett
Jim Hampton
Ellis Hanan
Eugenia Hofammann
Willis Isaac
Paul Johnson
L. Gilbert Kendrick
Lynda Knight
Ed Lasseter
Jane LeCroy
Tommy Leverette
Lawson Little
Randolph Lurie
Joe Marston
Bill McKnight
Tony McLain
Tom Parker
Libba Petree
Carol Smith
James R. Solomon, Jr
Mike Sundock
Bernard Sykes
Bill Turner
Don Valeska
Pete Yates
John Yung
Tommy Zieman

OPINIONS CLERK
Sandra Beauchamp

ASSISTANT ATTORNEYS GENERAL ASSIGNED TO OTHER DEPARTMENTS

AGRICULTURE
George Miller

AIR POLLUTION CONTROL
Darvin Morris

BOARD OF MEDICAL EXAMINERS
Jack Mooresmith

CONSERVATION
Robert A. MacCrory
William G. O'Rear

CONSUMER PROTECTION
Joe Dawkins

EXAMINERS OF PUBLIC ACCOUNTS
Don E. Lawley
Pat Robinson

FINANCE DEPARTMENT
Jerry Weidler

HEALTH DEPARTMENT
James T. Pons
John Wible

HIGHWAY DEPARTMENT
Ed Brogden
Julia Griswold
John Hartley, Jr.
Jack F. Norton
Lucian Smith

INDUSTRIAL RELATIONS
George Cocoris
Craig A. Donley
Frank D. Marsh
Wes Romine

INSURANCE DEPARTMENT
David Allred
Charles Barnes

MEDICAL SERVICES ADMINISTRATION
Kelso Jones

MENTAL HEALTH DEPARTMENT
Emmett Poundstone
Frank Ralph
G. Ricky Trawick

OIL AND GAS BOARD AND GEOLOGICAL SURVEY
Charles Freeman
James H. Griggs

PENSIONS AND SECURITY
Roger Burnett
Clyde McClendon
Jamie Pettigrew
Mary Lee Stapp

REVENUE DEPARTMENT
Ron Bowden
John Breckenridge
Herbert Burson
Frank Loeb
James R. Payne
William Thompson

SECURITIES COMMISSION
David Barnes
Thomas Krebs

SURFACE MINING RECLAMATION COMMISSION
Ronald F. Reeves

WATER IMPROVEMENT COMMISSION
Bill Butler
Craig Kneisel

QUARTERLY REPORT

of the

ATTORNEY GENERAL

of

ALABAMA

For the Period

From April 1, 1979

Through June 30, 1979

TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from April 1, 1979 through June 30, 1979, is published in compliance with the provisions of Title 55, Section 228 Code of Alabama, 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State, and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy district attorney of his county. The section also requires that I send a copy of this report to each district attorney and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, County, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

CHARLES A. GRADDICK

Attorney General

OPINIONS

INDEX

QUARTERLY REPORT OF THE ATTORNEY GENERAL FOR THE PERIOD APRIL 1, 1979, THROUGH JUNE 30, 1979.

Page

— A —

AD VALOREM TAX:

Forfeiture by tax collectors for failure to timely file settlements required by law may be excused by comptroller when failure is unavoidable by tax collector and is due to circumstances beyond his control 42

A mobile home bought in one county, and licensed there, then temporarily taken into another county need not be licensed in the second county 37

AGENCIES:

The Department of Industrial Relations and other similarly situated State Agencies are required to pay a docket fee for any civil action brought in the name of and on behalf of the State of Alabama 48

AGRICULTURAL RUNOFF MANAGEMENT PLAN:

Agricultural Runoff Management Plan 26

ATTORNEYS:

City of Andalusia may under certain circumstances employ legal counsel for members of city council 16

— B —

BAIL BONDS:

Discussion of sheriff's authority to approve bond and release defendants 20

— C —

COMMISSION ON AGING:

Local governments, county and municipal, may form an "Aging Consortium" to cooperate with the Alabama Commission on the Aging to further programs of that Commission 30

COMPETITIVE BID LAW:

Competitive bids are required for the lease of computer services for bookkeeping purposes 34

COMPTROLLER:

Forfeiture by tax collectors for failure to timely file settlements required by law may be excused by comptroller when failure is unavoidable by tax collector and is due to circumstances beyond his control 42

City is entitled to 10 percent of the proceeds of the privilege tax on production of oil and gas from wells located within the corporate limits or the police jurisdiction thereof 35

COUNTIES:

Counties have no right to levy any tax except such as is granted to them by the Legislature, but county governing body may levy tax where authorized by the Legislature 32

Local governments, county and municipal, may form an "Aging Consortium" to cooperate with the Alabama Commission on the Aging to further programs of that Commission 30

County work on private roads discussed 17

COURTS:

Municipal Fair Trial Tax cannot be used to pay cost of proceedings brought in probate court by city to have indigent mentally disturbed persons incarcerated in city jail committed to mental institution 21

Uniform traffic citation should be forwarded to Department to Public Safety although sentence for traffic violation in municipal court is commuted by mayor and/or fines are remitted 37

The Department of Industrial Relations and other similarly situated State Agencies are required to pay a docket fee for any civil action brought in the name of and on behalf of the State of Alabama 48

— E —

EDUCATION:

The University of Alabama may assign "uncollectible" student loans to HEW in consideration of continuing student loan program 44

A tenured teacher may be suspended without pay prior to a hearing on the teacher's proposed cancellation before the employing Board of Education and a decision by the Board to dismiss the teacher 28

ESTATES:

Grant of letters testamentary after revocation of letters of administration does not require new notice of appointment nor does it extend the period within which claims may be filed 22

— F —

FEES:

The Department of Industrial Relations and other similarly situated State Agencies are required to pay a docket fee for any civil action brought in the name of and on behalf of the State of Alabama 48

City of Andalusia may under certain circumstances employ legal counsel for members of city council 16

— G —

GASOLINE TAX:

Counties have no right to levy any tax except such as is granted to them by the Legislature, but county governing body may levy tax where authorized by the Legislature 32

— H —

HOSPITALS:

Code of Alabama 1975 §22-21-1, and following, authorizes the establishment of public hospital corporations 47

HUNTSVILLE, CITY OF:

Code of Alabama 1975, §22-21-1, and following, authorizes the establishment of public hospital corporations 47

— I —

INDIGENTS:

Municipal Fair Trial Tax cannot be used to pay cost of proceedings brought in probate court by city to have indigent mentally disturbed persons incarcerated in city jail committed to mental institution 21

— J —

JUDGES OF PROBATE:

Grant of letters testamentary after revocation of letters of administration does not require new notice of appointment nor does it extend the period within which claims may be filed 22

— L —

LEASES:

Competitive bids are required for the lease of computer services for bookkeeping purposes 34

Leases of parcels of land for building development may create a "subdivision" for purposes of municipal subdivision regulation 13

LOANS:

The University of Alabama may assign "uncollectible" student loans to HEW in consideration of continuing student loan program 44

LOCAL LAWS:

County work on private roads discussed 17

LICENSES:
A mobile home bought in one county, and licensed there, then temporarily taken into another county need not be licensed in the second county 37

— M —

MEDICAL EXAMINERS, BOARD OF:
Guidelines governing the practice of professional nursing are legal and valid only when approved and adopted by both the State Board of Medical Examiners and the Board of Nursing 38

MENTAL HEALTH:
Municipal Fair Trial Tax cannot be used to pay cost of proceedings brought in probate court by city to have indigent mentally disturbed persons incarcerated in city jail committed to mental institution 21

MOBILE HOMES:
A mobile home bought in one county, and licensed there, then temporarily taken into another county need not be licensed in the second county 37

MUNICIPAL FAIR TRIAL TAX:
Municipal Fair Trial Tax cannot be used to pay cost of proceedings brought in probate court by city to have indigent mentally disturbed persons incarcerated in city jail committed to mental institution 21

MUNICIPALITIES:
Local governments, county and municipal, may form an "Aging Consortium" to cooperate with the Alabama Commission on the Aging to further programs of that Commission 30
Leases of parcels of land for building development may create a "subdivision" for purposes of municipal subdivision regulation 13

— N —

NURSING, ALABAMA BOARD OF:
Guidelines governing the practice of professional nursing are legal and valid only when approved and adopted by both the State Board of Medical Examiners and the Board of Nursing. 38

— O —

OFFICERS AND OFFICES:
City of Andalusia may under certain circumstances employ legal counsel for members of city council 16

— P —

PLANNING AND ZONING:
Leases of parcels of land for building development may create a "subdivision" for purposes of municipal subdivision regulation 13

POLLARD, CITY OF:
City is entitled to 10 percent of the proceeds of the privilege tax on production of oil and gas from wells located within the corporate limits or the police jurisdiction thereof 35

PRIVATE ROADS:
County work on private roads discussed 17

PUBLIC SAFETY:
Uniform traffic citation should be forwarded to Department of Public Safety although sentence for traffic violation in municipal court is commuted by mayor and/or fines are remitted 37

— R —

REGULATIONS:
Guidelines governing the practice of professional nursing are legal and valid only when approved and adopted by both the State Board of Medical Examiners and the Board of Nursing 38

— S —

SHERIFFS:
Discussion of sheriff's authority to approve bond and release defendants 20

SILVICULTURAL RUNOFF MANAGEMENT PLAN:
Silvicultural Runoff Management Plan 23

SOCIAL SECURITY:
Code of Alabama 1975, §22-21-1, and following, authorizes the establishment of public hospital corporations 47

— T —

TAXATION:
City is entitled to 10 percent of the proceeds of the privilege tax on production of oil and gas from wells located within the corporate limits of the police jurisdiction thereof 35

TAX COLLECTORS:

Forfeiture by tax collectors for failure to timely file settlements required by law may be excused by comptroller when failure is unavoidable by tax collector and is due to circumstances beyond his control 42

TEACHERS:

A tenured teacher may be suspended without pay prior to a hearing on the teacher's proposed cancellation before the employing Board of Education and a decision by the Board to dismiss the teacher 28

TENURE:

A tenured teacher may be suspended without pay prior to a hearing on the teacher's proposed cancellation before the employing Board of Education and a decision by the Board to dismiss the teacher 28

— U —

UNIFORM TRAFFIC CITATION:

Uniform traffic citation should be forwarded to Department of Public Safety although sentence for traffic violation in municipal court is commuted by mayor and/or fines are remitted 37

UNIVERSITY OF ALABAMA:

The University of Alabama may assign "uncollectible" student loans to HEW in consideration of continuing student loan program 44

— W —

WATER IMPROVEMENT COMMISSION:

Agricultural Runoff Management Plan 26
Silvicultural Runoff Management Plan 23

WILLS:

Grant of letters testamentary after revocation of letters of administration does not require new notice of appointment nor does it extend the period within which claims may be filed 22

April 11, 1979

Honorable G. William Noble
Mayor
City of Gardendale
Gardendale, Alabama 35071

Municipalities — Planning and Zoning — Gardendale, City of.

Leases of parcels of land for building development may create a "subdivision" for purposes of municipal subdivision regulation.

Opinion by Assistant Attorney General Smith.

Dear Mayor Noble:

This office has received your opinion request of February 5, 1979 regarding a clarification of the subdivision regulations of the City of Gardendale.

Before answering your question, it appears that a clarification of the term "subdivision" is needed. In your opinion request you state:

> Under the subdivision regulations of the City of Gardendale when a single tract of land is divided into two parcels a subdivision of said tract is required, or if a portion of a single tract of land is sold to another party a subdivision in required.

It is apparent that your interpretation of your subdivision regulations is in direct conflict with the statutory authority authorizing a municipality to regulate subdivisions of land.

For purposes of regulation by a municipality, the word "subdivision" is defined in **Code of Alabama 1975**, §11-52-1 (6) as:

> The division of a lot, tract or parcel of land into two or more lots, plats, sites or other divisions of land for the purpose, whether immediate or future, of sale or of building development. Such term includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.

In an opinion to Honorable Russell B. Johnson, Planning and Industrial Development Board, under date of July 28, 1970, a copy of which is enclosed, this office stated:

> I am of the opinion that a "subdivision" is created when a person divides a tract of land into two or more lots with the intent to convey, either presently or in the future, more than one of such lots. However, a "subdivision" is not created by a person who sells or offers for sale only one lot which is a part of a larger tract owned by him.

In that opinion this office concluded:

> If he intends to convey both lots, a "subdivision" would be created. If he intends to convey only one lot and retain the remainder of his large tract, a "subdivision" would not be created. Of course, the intent of the owner of the large tract is a question of fact which must be decided in each case.

It is therefore, apparent that the City of Gardendale has no statutory authority to enforce subdivision regulations on a division of land for sale unless the owner of the large tract in question intends to convey more than one of the lots created in the division of land.

However, the question presented in your request requires an interpretation of an additional portion of Section 11-52-1 (6), **supra,** not specifically discussed in the opinion to Honorable Russell B. Johnson, **supra.**.. Your request states:

> Our question is what would be the effect of a long term lease wherein the owner retained title to the property, but entered into a long term lease arrangement for development with another party? Should this be considered as a transfer of interest requiring a subdivision of the property.

The answer requires consideration of the meaning of the phrases "for the purpose, whether immediate or future, . . . of building development" as found in Section 11-52-1 (6), **supra.**

It is clear under this portion of Section 11-52-1 (6) that a "subdivision" may be created without intent by the owner to sell any portion of the land divided. Thus, an owner of property could create a "subdivision" by lease, if for the purpose of building development.

However, the rationale used in the Johnson opinion would be applicable to the lease of land, as well as the sale of land. A "subdivision" is created when a person divides a tract of land into two or more parcels with the intent to lease for building development, either presently or in the future, more than one of such parcels. However, a subdivision is not created when a person leases or offers for lease for building development only one parcel which is a part of a larger tract owned by him.

It is, therefore, the opinion of this office that leases of real property may, if for purposes of building development, create a "subdivision." If the person intends to lease both parcels for building development, a "subdivision" would be created. If the person intends to lease only one parcel and retain the remainder of the large tract, a "subdivision" would not be created. Of course, the intent of the owners of the large tract is a question of fact which must be decided in each case.

You do not ask, nor does this office by this opinion attempt to answer, whether the leasee of land might subsequently create a "sub-

division" of the leased land. Furthermore, this opinion does not deal with questions which might arise should an owner of property begin building development on his property without the conveyance of any interest in the land to another nor does this opinion attempt to answer problems which might be presented if a property owner sold one parcel and leased another.

I do hope that this response fully answers your question. If, however, this office may be of further assistance, please do not hesitate to call on us.

Sincerely,

CHARLES GRADDICK
Attorney General

July 28, 1960

Honorable Russell B. Johnson
Manager, City Planning Division
Planning and Industrial Development Board
CAPITOL

Dear Mr. Johnson:

Reference is made to your request for an opinion of this office, under date of June 15, 1960, in which you ask that we define the term "subdivision" as used in Title 37, Chapter 16, Article 3, Code of Alabama 1940. Reference is also made to your letter of July 15, 1960, which reads in part as follows:

> " 'Where an owner of a large lot or tract decides to divide the tract into two lots, does this constitute a "subdivision" and is he required to come before the planning commission for approval before subdivizing and selling the parcel?'
>
> * * * * * * * *
>
> " 'A property owner having a farm or large acreage at the edge of a town or in the police jurisdiction area wishes to deed an acre or other sized tract to a son or daughter for a building site. Does this constitute a "subdivision" and does the owner need to come before the planning commission for approval? . . .' "

Title 37, Section 786, Code of Alabama 1940, reads in part as follows:

> ". . . 'Subdivision' means the division of a lot, tract or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale or

of building development. It includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided."

I am of the opinion that a "subdivision" is created when a person divides a tract of land into two or more lots with the intent to convey, either presently or in the future, more than one of such lots. However, a "subdivision" is not created by a person who sells or offers for sale only one lot which is a part of a larger tract owned by him.

Therefore, the answer to the first question quoted herein above depends upon the intent of the owner of the tract of land. If he intends to convey both lots, a "subdivision" would be created. If he intends to convey only one lot and retain the remainder of his large tract, a "subdivision" would not be created. Of course, the intent of the owner of the large tract is a question of fact which must be decided in each case.

For the reasons already stated herein, the second question, quoted herein above, is answered in the negative.

Very truly yours,
MACDONALD GALLION
Attorney General

By—
PAUL T. GISH, JR.
Assistant Attorney General

April 19, 1979

Honorable Chalmers Bryant
Mayor, City of Andalusia
P. O. Box 429
Andalusia, Alabama, 36420

MUNICIPALITIES — OFFICERS AND OFFICES — LEGAL FEES

City of Andalusia may under certain circumstances employ legal counsel for members of city council.
Opinion by Assistant Attorney General Smith.

Dear Mayor Bryant:

Your opinion request concerning the propriety of employing legal counsel to defend members of the city council has been received by the Attorney General. Your request states that the City of Andalusia and members of the City Council of Andalusia have been sued by a former Chief of Police of the City of Andalusia. Council members are sued both individually and in their official capacities.

You ask if the City of Andalusia may employ and pay for legal counsel to defend members of the City Council in two suits claiming damages and other relief for .....?.....?.....?.....?..... in discharging the Chief of Police. It is the opinion of this office that the City of Andalusia may, in its discretion, expend funds for the defense of council members only if the tests outlined in the following paragraph are met.

The muncipal corporation must have a proper interest in the action. The acts allegedly committed must have been done by the officials in the discharge of their corporate duties. And the officials must have acted honestly and in good faith. **City of Montgomery v. Collins,** 355 So. 21,111 (1978); **City of Birmingham v. Wilkinson,** 239 Ala. 190, 194, So. 548 (1940).

When, in the judgment of the municipal governing body, the above-quoted tests have been satisfied, then and only then may the governing body decide whether to expend funds for the defense of city council members.

I do hope that this response fully answers your question. If, however, this office may be of further assistance, please do not hesitate to contact us.

Yours truly,

CHARLES A. GRADDICK
Attorney General

April 26, 1979

Perry County Commission
Perry County Courthouse
Marion, Alabama 36756
ATTENTION: Mr. Kirtley W. Brown
County Attorney

Counties—Perry County—Private Roads — Local Laws

County work on private roads discussed.

Opinion by Assistant Attorney General Stephens

Dear Commissioners:

We have received and considered at great length your request for an Attorney General's opinion as to whether the Perry County Commission may construct and maintain roads and right-of-ways leading to private dwellings pursuant to Act No. 325 of the 1976 Regular Session of the Alabama Legislature and whether roads generally and of necessity traversed for mail routes and passage of public school buses ought to be considered as public roads rather than private roads.

Your questions obviously arose as a result of the opinion which this office issued under date of January 19, 1979 to the Honorable Tom Young, District Attorney of Randolph County, which opinion stated that the County Commission of Randolph County was not authorized to perform work on private roads. That opinion was based upon several considerations, a discussion of which might be helpful here.

First, it is axiomatic in judicial considerations that a county and municipality can exercise only those powers granted by the Constitution or statutes.

Secondly, Amendment #112 to the Constitution of Alabama 1901, amended Section 94 of said Constitution which was identified as Sec. 55 of Constitution of Alabama 1875 and carried forward almost the identical language used as follows:

> "The legislature shall not have power to authorize any county, city, town, or other subdivision of this state to lend its credit, or to grant public money or thing of value in aid of, or to any individual, association, or corporation whatsoever, or to become a stockholder in any such corporation, association, or company, by issuing bonds or otherwise. It is provided, however, that the legislature may enact general, special, or local laws authorizing political subdivisions and public bodies to alienate, with or without a valuable consideration, public parks and playgrounds, or other public recreational facilities and public housing projects, conditional upon the approval of a majority of the duly qualified electors of the county, city, town, or other subdivision affected thereby, voting at an election held for such purpose."

The framers of our Constitution inserted this protective measure to prevent waste of public funds and temptation for political purpose and favoritism.

Also, Amendment #93 to the Constitution of 1901, as amended by Amendment No. 354, provides in pertinent part as follows:

> "No moneys derived from any fees, excises, or license taxes, levied by the state, relating to registration, operation, or use of vehicles upon the public highways except a vehicle-use tax imposed in lieu of a sales tax, and no moneys derived from any fee, excises, or license taxes, levied by the state, relating to fuels used for propelling such vehicles except pump taxes, shall be expended for other than cost of administering such laws, statutory refunds and adjustments allowed therein, cost of construction, reconstruction, maintenance and repair of public highways and bridges, costs of highway rights-of-way, payment of highway obligations, the cost of traffic regulation, and the expense of enforcing state traffic and motor vehicle laws. The provisions of this amendment shall not apply to

any such fees, excises, or license taxes now levied by the state for school purposes for this whole state or for any county or city board of education therein; . . ."

Code of Alabama 1975, §23-1-80 originated from Act #347, Acts of Alabama 1927, page 348 (The Alabama Highway Code) and provides as follows:

"The county commissions of the several counties of this state have general superintendence of the public roads, bridges and ferries within their respective counties so as to render travel over the same as safe and convenient as practicable. To this end, they have legislative and executive powers, except as limited in this chapter. They may establish, promulgate, and enforce rules and regulations, make and enter into such contracts as may be necessary or as may be deemed necessary or advisable by such commissions to build, construct, make, improve and maintain a good system of public roads, bridges and ferries in their respective counties, and regulate the use thereof; but no contract for the construction or repair of any public roads, bridge or bridges shall be made where the payment of the contract price for such work shall extend over a period of more than 20 years."

It is noted that the original act deals with **public** roads and that the 1975 Code specifies **public** roads, bridges and ferries. The only reasonable and logical interpretation leads to but one conclusion: viz., so-called state "gas tax" funds may be expended by counties for "public road" purposes only.

Still further, Section 36-10-14 provides, in pertinent part, that

"(a) No public officer shall:

. . . (3) Employ or use any person, money or property under his official control or direction or in his official custody for the private benefit or gain of himself or another."

Considering all of the above constitutional and statutory provisions and principles of law this office concluded that it was illegal for county commissions to do work on private roads.

Unlike the question presented by Mr. Young, your question concerns the constitutionality of a local act which is applicable to Perry County and which provides that the county commission may perform work on private roads and drives. Some of the same principles and provisions of law which are discussed above as the basis for the opinion to Mr. Young may, however, also be applicable to a consideration of the question you have posed. Still another factor to be considered is the applicability of §105 of the State Constitution which prohibits the legislature from enacting a local law in any case which is provided for by a general law.

There are several other counties, in addition to Perry County, which have local laws purporting to authorize the county commissions to work on private roads and this office has received inquiries about them also. However, an Attorney General's opinion, being advisory in nature, would not resolve the questions raised by these local laws and the courts will probably have to eventually decide this issue. Therefore, this office will not express an opinion on the constitutionality of those laws but offers the above discussion for consideration by appropriate officials.

Sincerely,

CHARLES A. GRADDICK
Attorney General

April 26, 1979

Sheriff James Earl Johnson
Sheriff's Office
Chilton County Courthouse
Clanton, Alabama 35045

Sheriffs—Bail Bonds

Discussion of sheriff's authority to approve bond and release defendants.

Opinion by Assistant Attorney General Knight.

Dear Sheriff Johnson:

Reference is made to your request for an opinion from the Attorney General as to the authority of a sheriff as to bond approvals or who has authority to release inmates on bail bonds.

The applicable provisions concerning the discharge of defendants arrested for misdemeanors of an aggravated nature are found at **Code of Alabama 1975,** Section 15-7-20 and 15-7-21. Section 15-7-20 states that when the offense is a misdemeanor and the arrest warrant is executed by a sheriff or his deputy, the sheriff or deputy may discharge the defendant upon sufficient bail. Section 15-7-21 states that when the arrest warrant for a misdemeanor offense is not executed by a sheriff or his deputy, at the defendant's request, he may be brought before a judge or magistrate of the county where the warrant was executed and such judge or magistrate may discharge the defendant upon sufficient bail.

Code of Alabama 1975, Sections 15-13-5 and 15-13-6 deal with offenses charged in an indictment. If the offense is a misdemeanor the sheriff or deputy must discharge the defendant upon giving suf-

ficient bail. If the offense is a felony and bail is not given in open court, the judge sets the bond and the sheriff discharges the accused when sufficient bond is given.

If our office can be of further assistance, please do not hesitate to call on us.

Sincerely,

CHARLES A. GRADDICK
Attorney General

May 3, 1979

Honorable Lambert Mims
Mayor
City of Mobile
P. O. Box 1827
Mobile, Alabama 36601

Probate Court — Mental Health Commitments — Indigent Defense Funds

Municipal Fair Trial Tax cannot be used to pay cost of proceedings brought in probate court by city to have indigent mentally disturbed persons incarcerated in city jail committed to mental institution.

Opinion by Assistant Attorney General Knight

Dear Mayor Mims:

Reference is made to your request for an opinion from the Attorney General concerning the use of municipal fair trial tax to pay the cost of the proceeding for commitment of indigent mentally disturbed persons to mental institutions.

You specifically asked:

> "From time to time mentally disturbed persons who are indigent are incarcerated in the city jail and it becomes necessary to file a petition in the Probate Court to protect themselves or the general public to have them committed for observation or to a mental hospital.
>
> "In some instances, it is necessary for the City to act as a petitioner, due either to an emergency or because no relatives of the mentally disturbed person can be contacted.
>
> "In situations such as this an attorney is appointed by the Probate Court to represent the petitioner (the City of Mobile)

sometimes in bringing the proceedings as well as an attorney to represent the mentally disturbed person. Please give us your official opinion as to whether it would be legal to pay the cost of such Probate proceedings, including attorneys fees for the petitioner and the indigent mental patient from the funds that are available for indigent defense in municipal cases under Act No. 617, Regular Session of the Alabama Legislature of 1978."

Your question is to be answered in the negative. Act No. 617, Acts of Alabama 1978, pages 877, 878 states:

"Notwithstanding the provisions of Article 5, Chapter 19, Title 12, Code of Alabama, 1975, when the 'fair trial tax' levied and provided for in such Article is collected, the clerk of the municipal court of each municipality which has retained its municipal court, instead of remitting the receipts from said tax into the state treasury, shall pay such receipts into the general fund of the municipality. The governing body of such municipality shall use and expend so much of said funds as is necessary to defray the costs of providing representation of indigent defendants in their municipal court and after payment of such costs shall pay into the state treasury any funds not used for such purpose. The governing body shall render an accounting of such funds to the state treasurer on a monthly basis and the monthly report of such funds shall be filed with the state treasurer on or before the twentieth day of the month following collection."

The fair trial tax funds collected by the municipal clerk and paid into the general fund of the municipality are to be used to pay the cost of the representation of indigent defendants in that city's **municipal court.** There are no provision for using the money to defray the cost of representing litigants or paying their attorney fees or bringing petitions in any other court including the probate court. The money is to be used **only** for the purpose of **defraying the cost of representing indigent defendants in municipal courts** as provided in the act.

If our office can be of further assistance, please do not hesitate to call on us.

Sincerely,

CHARLES A. GRADDICK
Attorney General

May 3, 1979

Honorable Myrtle Green
Judge of Probate
Madison County Courthouse
Huntsville, Alabama 35804

Wills and Estates—Probate Judges

Grant of letters testamentary after revocation of letters of administration does not require new notice of appointment nor does it extend the period within which claims may be filed.

Opinion by Assistant Attorney General Stephens

Dear Judge Green:

We have received and considered your request for an Attorney General's opinion on the following two questions:

"1. Under 43-2-29(a) of the Code of Alabama; is it necessary to require the Executor subsequently appointed to give public notice by publication of his appointment as required by 43-2-60 and 61 of the Code of Alabama when the Administrator has already complied with said sections concerning notice?

"2. Under 43-2-29(a) of the Code of Alabama where an Executor is subsequently appointed more than six months after the appointment of the Administrator, is the period extended within which claim may be filed against the estate of the decedent for an additional six month period as set out in 43-2-350 of the Code of Alabama?"

It is my opinion that both questions should be answered in the negative. Where the Administrator has already given public notice prior to the naming of an Executor, the requirements of Section 43-2-60 of the Code of Alabama have been met and persons having claims against the estate have been given the notice deemed sufficient by the Legislature. Similarly, the Legislature has prescribed a six-month period for filing claims against an estate and no extension of that period is provided where an Executor is named to replace an appointed Administrator. That six-month period begins to run from the date of the initial issuance of letters of administration or testamentary.

I hope and trust that this sufficiently answers your questions. If we can be of any further help to you, please let me know.

Sincerely,

CHARLES A. GRADDICK
Attorney General

May 3, 1979

Mr. James W. Warr, Director
Water Improvement Commission
State Office Building
Montgomery, Al. 36130

Water Improvement Commission

Silvicultural Runoff Management Plan

Opinion by Assistant Attorney General L. Gilbert Kendrick

Dear Mr. Warr:

This is in response to your letter of March 15, 1979, requesting an opinion of the Attorney General as to certain matters relating to certification of the Silvicultural Runoff Management Plan for Alabama. Specifically, you identified three areas for which Environmental Protection Agency regulations or procedures require an opinion by the Attorney General prior to approval of that plan as part of the Statewide Waste Treatment Management Plan:

1. Can the regulatory program contemplated in the plan be established under state law to meet the requirements of Section 208(b) (2) (C) (i)—(iii) of the Clean Water Act (33 U.S.C. §1251 et seq.)?

2. Do the management agencies designated by the Governor have the authority under state law to carry out the requirements of Section 208(c) (2) (A)-(I) of the Clean Water Act?

3. Is the plan in conformance with all state and local legislation, regulations or other requirements or plans regarding land use and protection of the environment, except for those cases where the plan specifically recommends changing such legislation, regulations or other appropriate requirements?

As mentioned in your letter requesting this opinion, the only subsection of Section 208 which appears to be applicable to the Silvicultural Runoff Management Plan (hereinafter, the Silvicultural Plan) is Section 208 (c) (2) (A).

Section 208(b) (2) (C) (i)—(iii) sets out certain requirements to be met by a plan's regulatory program. Since the Silvicultural Plan recommends a voluntary, rather than regulatory, program, an opinion addressing this issue is unnecessary. Section 208 (c) (2) (A)-(I) sets forth certain powers which, where appropriate, must be possessed by each management agency. It is apparent that subsection (B)-(I) concern the operation and maintenance of waste treatment works. Since the Silvicultural Plan addresses the control of pollution from non-point source runoff, which does not involve waste treatment works, an opinion as to the adequacy of the designated management agencies' authority under Section 208 (c) (2) can limit itself to consideration of subsection (A), which requires each designated management agency to have adequate authority to carry out appropriate portions of the management plan.

Management agencies to be designated under the Silvicultural

Plan are listed in Chapter 9 of the Plan and Table 9-A-1 of the Addendum. Designated management agencies are the Alabama Forestry Commission, the Alabama Water Improvement Commission, the Alabama Cooperative Extension Service, the Environmental Protection Agency, the U. S. Forest Service, and the Soil Conservation Service. The latter three are federal agencies whose authority is furnished by federal statutes, and therefore this opinion will not address the adequacy of their statutory authority.

The management functions assigned to the Alabama Forestry Commission are listed as Tasks 1 through 20 in Chapter 3 of the Silvicultural Plan. Tasks 1 through 14 involve education measures designed to make the public aware of the advantages of employing Best Management Practices in the development and utilization of forestry resources. Tasks 15 through 20 involve evaluation of the Silvicultural Plans' implementation, effectiveness and related matters.

The Alabama Forestry Commission is established by **Code of Alabama 1975,** Section 9-3-1 et seq., and the powers of the agency are delineated in Section 9-3-4. Additional powers are found in **Code of Alabama 1975,** Chapter 13, primarily in Section 9-13-3 and 9-13-4. The Alabama Forestry Commission has adequate authority under the above-cited statutes to carry out the assigned functions.

The management functions assigned to the Alabama Water Improvement Commission are listed at Chapter 3 (Tasks 21 through 23) and Chapter 9 (Administration of 208 Planning Funds). Tasks 21 and 22 involve in-stream sampling, while Task 23 involves stream classification.

The Alabama Water Improvement Commission operates under **Code of Alabama 1975,** Section 22-22-1 et seq. and has adequate authority under this statute to carry out its assigned functions.

The Alabama Cooperative Extension Service is assigned the function, jointly with the Alabama Forestry Commission, of developing Demonstration Forests (Task 6, Chapter 3 of the Plan).

The Extension Service has adequate statutory authority under **Code of Alabama 1975,** Section 2-30-20 through 2-30-24 to carry out this function.

This concludes the portion of the opinion concerning the adequacy of the designated management agencies' statutory authorities. Your other question concerned the Silvicultural Plan's conformity with existing laws.

It is my opinion that the Silvicultural Plan does not propose any measures which would violate existing state or local legislation or regulations regarding land use and protection of the environment.

Sincerely,

CHARLES A. GRADDICK
Attorney General

May 3, 1979

Mr. James W. Warr, Director
Water Improvement Commission
State Office Building
Montgomery, Al. 36130

Water Improvement Commission

Agricultural Runoff Management Plan

Opinion by Assistant Attorney General L. Gilbert Kendrick

Dear Mr. Warr.

This is in response to your letter of March 15, 1979, requesting an opinion of the Attorney General as to certain matters relating to certification of the Agricultural Runoff Management Plan for Alabama. Specifically, you identified three areas for which Environmental Protection Agency regulations or procedures require an opinion by the Attorney General prior to approval of that plan as part of the Statewide Waste Treatment Management Plan:

1. Can the regulatory program contemplated in the plan be established under state law to meet the requirements of Section 208(b)(2)(C)(i)-(iii) of the Clean Water Act (33U.S.C. §1251 et seq.)?

2. Do the management agencies designated by the Governor have the authority under state law to carry out the requirements of Section 208 (c) (2) (A)-(1) of the Clean Water Act?

3. Is the plan in conformance with all state and local legislation, regulations or other requirements or plans regarding land use and protection of the environment, except for those cases where the plan specifically recommends changing such legislation, regulations or other appropriate requirements?

As mentioned in your letter requesting this opinion, the only subsection of Section 208 which appears to be applicable to the Agricultural Runoff Management Plan (hereinafter, the Agricultural Plan) is Section 208(c) (2) (A).

Section 208(b)(2)(C)(i)-(iii) sets out certain requirements to be met by a plan's regulatory program. Since the Agricultural Plan recommends a voluntary, rather than regulatory, program, an opinion addressing this issue is unnecessary. Section 208(c)(2)(A)(I) sets forth certain powers which, where appropriate, must be possessed by each management agency. It is apparent that subsection (B)(I) concern the operation and maintenance of waste treatment works. Since the Agricultural Plan addresses the control of pollution from non-point source runoff, which does not involve waste treatment works, an opinion as to the adequacy of the designated management agencies' authority under Section 208(c) (2) can limit itself to consideration of

subsection (A), which requires each designated management agency to have adequate authority to carry out appropriate portions of the management plan.

Management agencies designated under the Agricultural Plan are listed in Table 9.1. Designated state management agencies are the Alabama Water Improvement Commission, the Soil and Water Conservation Districts, the Alabama Department of Agriculture and Industries, the Alabama Cooperative Extension Service, and the Alabama Agricultural Experiment Station. Federal designated management agencies are the Agricultural Stabilization and Conservation Service, the Farmers Home Administration, Federal Agricultural Research, and the Soil Conservation Service. Since these federal agencies operate under authority furnished by federal statutes, this opinion will not address the adequacy of their statutory authority.

The Alabama Water Improvement Commission is designated as the management agency for continuing planning. Specific responsibilities under this function include water quality monitoring and classification, grant administration, plan review, special studies, and conducting a public participation program. The Alabama Water Improvement Commission has adequate authority under **Code of Alabama 1975,** Section 22-22-1 et seq., to carry out the assigned functions.

The Soil and Water Conservation Districts are assigned the following responsibilities in controlling pollution from sediment, nutrients, and animal wastes: (1) Provide technical assistance in planning and implementation of Best Management Practices, and (2) Assist individual land users in developing conservation plans on complete farms or farm units.

The Soil and Water Conservation Districts are established by **Code of Alabama 1975,** Section 9-8-20 through 9-8-67, and have adequate authority under this statute to carry out the assigned functions.

The Alabama Department of Agriculture and Industries is assigned the function of enforcing state regulations to prevent damage to streams and lakes from the use and application of pesticides. The Department is made responsible for the registration, sale and the use of pesticides by **Code of Alabama 1975,** Section 2-27-1 through 2-27-16. The Department is further responsible for regulating the custom application of pesticides under Section 2-27-50 through 2-27-63.

Under these statutes, the Department of Agriculture and Industries has adequate authority to regulate the registration and sale of pesticides. However, its authority to effectively regulate pesticide application is restricted by Sections 2-27-50 (6) and 2-27-52, which limit the scope of the statute so as not to apply to non-commercial application of pesticides, such as application by "persons engaged in farming activities who use their own aircraft or ground equipment for the application of pesticides," or "municipalities, counties or the state or federal agencies,

or subdivisions thereof, where such governmental agencies engage in the custom application of pesticides through employees of such agencies . . .." These sections impose a potentially significant limitation on the ability of the Department of Agriculture and Industries to prevent pollution from pesticides application.

The Alabama Cooperative Extension Service is designated the management agency for two functions concerning education of agricultural and users and has adequate authority under **Code of Alabama 1975,** Sections 2-30-1 through 2-30-4 to carry out the assigned functions.

The Agricultural Experiment Station is made responsible for conducting research concerning Best Management Practice and sediment runoff from agricultural lands. The Agricultural Experiment Station is established under **Code of Alabama 1975,** Sections 2-30-40 through 2-30-44 and has adequate authority under this statute to carry out the assigned functions.

This concludes the portion of the opinion concerning the adequacy of the designated management agencies' statutory authorities. Your other question concerned the Agricultural Plan's conformity with existing laws.

It is my opinion that the Agricultural Plan does not propose any measures which would violate existing state or local legislation or regulations regarding land use and protection of the environment.

Sincerely,

CHARLES A. GRADDICK
Attorney General

May 3, 1979

Mr. A. C. Allen, Jr.
Superintendent
Dothan City Schools
500 Dusy Street
Dothan, Al. 36301

Education—Teachers—Tenure

A tenured teacher may be suspended without pay prior to a hearing on the teacher's proposed cancellation before the employing Board of Education and a decision by the Board to dismiss the teacher.

Opinion by Assistant Attorney General Hofammann

Dear Mr. Allen:

Recently you requested an opinion on the question of whether

under **Code of Alabama 1975,** §16-24-9, a tenured teacher may be suspended without pay prior to a hearing on the teacher's proposed cancellation before the employing board of education and a decision by the board to dismiss the teacher.

Your question is to be answered in the affirmative.

The controlling statute, **Code of Alabama 1975,** §16-24-9, provides in pertinent part as follows:

> The employing board of education shall give notice in writing to the teacher stating in detail the reasons for the proposed cancellation and naming the exact time and place at which the teacher may appear before the board to answer said notice, which date shall not be less than 20 nor more than 30 days after the service of such notice to the teacher by United States registered or certified mail with postage prepaid thereon to said teacher's last known address. Such notice shall also inform the teacher that in order to contest said cancellation the teacher must file with the board, at least five days prior to the date the matter is set for hearing, notice of an intention to contest. Nothing herein provided is intended to prevent the suspension of a teacher pending a hearing on such proposed cancellation and the final determination thereof. No teacher dismissed as the result of such hearing shall receive compensation for the period of such suspension.

It is my opinion that a suspension without pay under §16-24-9 pending a hearing does not deprive a teacher of due process. That statute provides for the board's giving notice of reasons for the proposed cancellation to the teacher, and expressly allows a suspension pending a hearing and final determination on the proposed cancellation. The statute does not contemplate that a suspension without pay precede notice of proposed cancellation; and only if the teacher is dismissed following the hearing, does the statute prohibit the teacher's being paid for the period of suspension. Plainly, if the board's final decision were not adverse to the teacher, the teacher would be entitled to compensation for the suspension period.

Provisions in the Code of Alabama comparable to §16-24-9 have been upheld as constitutional by the Alabama Supreme Court. In **Pool v. Williams,** 280 Ala. 337, 194 So. 2d 87, the Supreme Court found no denial of due process to a state merit system employee who was suspended without pay (and without the right to a hearing) under Title 55, Section 316, Code of Alabama 1940 (**Code of Alabama 1975,** §36-26-28). In that opinion the Court noted that by the plaintiff's having accepted employment by the state, he had accepted as well "the provisions of law governing his employment," of which the suspension statute was a part. (280 Ala. at 339)

Similarly, a teacher afforded the protection of the Alabama teacher

tenure laws may be deemed to have accepted the provision of §16-24-9 allowing a suspension without pay pending a hearing resulting in dismissal. While the tenure statutes create a teacher's property interest in continued employment, they also define and regulate how that interest may be circumscribed and terminated. The teacher tenure provisions have been held repeatedly by the courts of this state to accord due process to teachers. (See **Board of Education of Choctaw Co. v. Kennedy,** 256 Ala. 478, 55 So 2d 511: **Cooper v. Perry Co. Board of Education,** 264 Ala 251, 86 So 2d 832.) Therefore, a suspension without pay pending a hearing which results in a teacher's termination, such suspension being authorized by §16-24-9, does not fail to comport with due process.

In response to your immediate question of whether the Dothan City Board of Education is liable for the payment of salaries to three teachers who received notice of reasons for their proposed cancellations and were suspended without pay in September, 1978, prior to their October 2-3 terminations, §16-24-9 prohibits the board's paying the teachers' salaries for the period of suspension, thus the board may not lawfully expend funds to compensate the teachers for the time of suspension in September preceding their dismissal.

I hope that this letter serves to answer your inquiry satisfactorily. If this office may assist you further in this matter, please do not hesitate to contact us.

Sincerely,

CHARLES A. GRADDICK
Attorney General

May 16, 1979

Honorable Thomas A. Snowden, Jr.
Judge of Probate and Chairman,
Shelby County Commission
Columbiana, Alabama 35051

Commission on Aging—Municipalities and Counties

Local governments, county and municipal, may form an "Aging Consortium" to cooperate with the Alabama Commission on the Aging to further programs of that Commission.

Opinion by Assistant Attorney General Davis.

Dear Judge Snowden:

In your letter of April 17, 1979, to this office you request an opinion as to the legal basis under which an "Aging Consortium" may

be formed by local (county and municipal) governments, and further, you asked what authority such a consortium would have.

You state that the purpose of the proposed multi-jurisdictional consortium would be to operate a program in conjunction with the Alabama Commission on the Aging which would plan, coordinate and provide social services for the elderly in five named counties, including Shelby County. It is proposed that the program will be governed by a Board of Directors composed of chief elected officials of the cooperating governments, and that it would be financed with local funds from the city and county governments and Federal Funds secured for the consortium through the agis of the Alabama Commission on the Aging. You further state that it is proposed to structure the organization along the lines of the Central Alabama Aging Commission.

The Central Alabama Aging Commission was considered in an opinion of this office dated October 9, 1975, and addressed to William F. Joseph, Jr., Chairman of the Central Alabama Regional Planning and Development Commission, to which opinion you refer in your letter. In that opinion a question similar to your first question was considered and the opinion was expressed that:

> ". . . it appears that the 'aging consortium' is authorized by Title 37, Section 814 (10), subsections 5, 6, and 7 (Alabama Code 1940 Recompiled 1958, 1973 Cumulative Supplement, now Code of Alabama 1973, Section 11-85-56, subsection 5, 6, 7)"

You indicated that "while most local governments in the five counties are members of the Birmingham Regional Planning Commission, we do not wish for that to be a criteria for membership in the Consortium."

There are three statutes which bear upon your question. These are: Code of Alabama 1975, Section 38-1-6, Section 11-1-10, and Section 11-40-1. These statutes provide, inter-alia, as follows:

> §38-1-6. ". . . all county and municipal governments in this state are hereby authorized to voluntarily participate in any program which is related to any form of assistance for the aged, including, but not limited to, . . . any other program supported by the federal government . . . or other political or private organizations which establish assistance programs for the aged. Participation in said . . . programs may be in the form of moneys, services rendered or any other form of voluntary participation available."
>
> §11-1-10. "The county commission . . . is hereby authorized and empowered to enter into contracts, . . . compacts or any other form of agreement with . . . any other county for the purpose of receiving or acquiring funds, matching funds, services, . . . and any and all other benefits deemed for the public

interest in the promotion of . . . any further beneficial development."

§11-40-1. "All municipal organizations now existing . . . and . . . that may hereafter be incorporated . . . shall be bodies politic and corporate, . . . shall sue and be sued, contract and be contracted with . . ."

In view of the foregoing statutory provisions, it is the opinion of this office that these statutes provide the basis under which local governments may form an "Aging Consortium." The authority possessed by such a consortium would be that authority delegated to it by the local governments within the purview the foregoing statutes.

Sincerely,

CHARLES A. GRADDICK
Attorney General

May 16, 1979

Honorable George A. Desmond, Chairman
Bibb County Commission
Room 15, Community Activity Building
103 Davidson Drive
Centreville, Alabama 35042

Gasoline tax—Bibb County—Counties

Counties have no right to levy any tax except such as is granted to them by the Legislature, but county governing body may levy tax where authorized by the Legislature.

Opinion by Assistant Attorney General Breckenridge

Dear Mr. Desmond:

The resolution of the Bibb County Commission dated March 30, 1979, requesting an opinion from the Attorney General has been referred to my desk for reply. Basically your request was as follows:

"Can the Bibb County Commission add a county gasoline tax by resolution, or must it be done by the Alabama Legislature through a local act or a constitutional amendment?"

It is my opinion that no governing body of an Alabama county has an inherent power to levy a tax, but only has such power as may be granted by the Legislature. As far as can be determined this has always been the unanimous position of the various courts in Alabama. In the case of **Moody v. Flowers, 256** F.Supp 195, the federal district court ruled:

> "An Alabama county has no inherent power to tax; it can impose only such tax, on such subject, under such circumstances, and within such rate as the State authorizes. In Alabama the counties' authority to tax is derived from "the Legislature and may be withheld, withdrawn, or modified."

The decisions of the Alabama courts are in line with the decision of the federal court. The Alabama Supreme Court has on several occasions voiced the opinion that "counties have such power of taxation as is delegated to them by legislative authority." **Mills v. Court of Commissioners of Conecuh County,** 204 Ala. 42, 85 So. 564. "The right of a county to levy tax is a bounty conferred by the State, and is only such as the State may deem expedient." **State v. Butler,** 225 Ala. 191, 142 So. 531. "The right of a county to levy a tax is conferred by the State and is only such as the State may deem expedient, and is not greater nor other than the State possessed." **State Ex rel Tallapoosa County v. Butler,** 227 Ala. 212, 149 So. 101. "The counties have no right to levy any tax except such is granted to them by the Legislature." **Beeland Wholesale Co. v. Kaufman,** 234 Ala. 249, 174 So. 516. "Counties have no inherent power of taxation." **Jefferson County v. City of Birmingham,** 248 Ala. 319, 27 So.2d 584. "A county has no power of taxation except such as is conferred by statute, to be exercised subject to the conditions and limitations prescribed." **Sidney Spitzer and Company v. Monroe County,** 274 F. 819. See generally, Alabama Digest, **Counties,** §190(1), (2).

Therefore, it is my opinion that the Bibb County Commission has no inherent power to levy a local gasoline tax without authority from the Alabama Legislature. However, it is my opinion that the Legislature has the power to delegate the authority to levy a tax to a county commission. The Constitution of Alabama provides:

> "The power to levy taxes shall not be delegated to individuals or private corporation or associations." **Constitution of Alabama of 1901,** §212.

It has been held by the courts of Alabama that this section does not prohibit the Legislature from delegating to a local county governing body, which is a subdivision of the State, the authority to collect a tax for local purposes. **Opinion of the Justices,** 291 Ala. 262, 280 So.2d 97.

In the case of **The Standard Oil Company of Kentucky v. Limestone County,** 220 Ala. 231, 124 So. 523, the question involved was the constitutionality of an act authorizing the county commissioners of Limestone County, Alabama, to levy a privilege tax on all persons selling or storing motor fuels in the county. The tax was for public road purposes. In upholding the act, the Supreme Court of Alabama stated:

> "We need merely mention what has been so often said, that the sovereign power of the Legislature in the matter of privi-

leges taxes is unabridged save in the matter of reasonable classification, uniformity in application to a class, and freedom from invasion of constitutional guarantees against confiscation or oppression.

"Local road laws carrying provisions for levying and collecting privilege taxes under orders of the governing bodies of counties were well known prior to the Constitution of 1901. Like laws enacted since that time, "committing to the county authorities the power to make such levies and to make regulations looking to their collection, have been continuously enacted and sustained by this Court since Kennamer v. State, 150 Ala. 74, 43 So. 482.

"If, in the judgment of the Legislature, local needs demand additional or supplemental laws substantially different from the general law, the Legislature has the power to so enact."

Thus it is my opinion that the Legislature of Alabama through a properly enacted local law may authorize the Bibb County Commission to collect an additional county gasoline tax. It is my opinion that such a local law, however, would have to meet the provisions of **Constitution of Alabama of 1901,** §106, which authorizes and provides the procedures whereby the Legislature may pass a local law.

I hope I have fully answered the request contained in your resolution, and if I can be of any further service to you in this matter, please do not hesitate to contact me.

Sincerely,

CHARLES A. GRADDICK
Attorney General

May 16, 1979

Honorable Radford Hester
Franklin County Schools
Office of Superintendent
P. O. Box 610
Russellville, Alabama 35653

Competitive Bid—Franklin County—Computer Services
Competitive bids are required for the lease of computer services for bookkeeping purposes.

Opinion by Assistant Attorney General Robinson

Dear Sir:

In a recent request made by the Franklin County Board of Education, you asked for an opinion of this office regarding the applicability

of the Alabama Competitive Bid Law to the leasing of computer services for bookkeeping purposes. See **Code of Alabama 1975,** Section 41-16-50 through 41-16-63. Specifically, you requested our opinion regarding the applicability of Section 41-16-51 (a) (5) which states that the competitive bid law does not apply to contracts for furnishing fiscal or financial advice or services. In my opinion, fiscal or financial advice or services contemplates activities such as a consultant giving advice to a public agency regarding its financial or fiscal affairs. The leasing of computer services for bookkeeping purposes, in my opinion, would entail the submission of information by the public agency to the computer service in order that the information might be compiled in a format specified by the public agency. Such a computer service for bookkeeping purposes would not entail the computer service giving the public agency advice on how to conduct their financial affairs.

Section 41-16-51 (a) (3), supra, states that the competitive bid law does not apply to contracts for securing the services of attorneys, physicians, architects, teachers, superintendents of construction, artists, appraisers, engineers, consultants, certified public accountants, public accountants, or other individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part. It is my opinion that the leasing of computer services for bookkeeping purposes would not involve a contract in which the personality of an individual would play a decisive part.

In securing the information necessary to prepare specifications for bids, it might be necessary for a public agency to contract with a computer programmer for consultation purposes. Such a computer programmer would be an individual possessing a high degree of professional skill where the personality of the individual might play a decisive part and, therefore, the services of such a computer programmer would not be subject to the competitive bid law. Once the public agency decides upon the format in which it wishes its books and records to be maintained and compiled, it would be a simple matter for the public agency to include these specifications in its invitations to bid on computer services for bookkeeping purposes.

If I may be of any further assistance to you regarding this matter, please do not hesitate to contact me.

Very truly yours,

CHARLES A. GRADDICK
Attorney General

May 17, 1979

Honorable Curtis Finley
Mayor, Town of Pollard
Pollard, Alabama

City of Pollard—State Comptroller—Taxation

City is entitled to 10 percent of the proceeds of the privilege tax on production of oil and gas from wells located within the corporate limits or the police jurisdiction thereof.

Opinion by Assistant Attorney General Davis.

Dear Mayor Finley:

In your letter of March 26, 1979, you requested of this office an opinion respecting the following situation:

Code of Alabama 1975, Section 40-20-8 (2) provides for distribution to the city of 10 percent of the proceeds of the privilege tax on production of oil and gas from wells located within the corporate limits or police jurisdiction of the city. In late 1978, it was discovered that there were producing wells located within the police jurisdiction of the Town of Pollard and the comptroller's office began, in November, 1978, to distribute to the Town of Pollard the 10 percent required by the statute. Your question is: What is the responsibility of the comptroller with respect to the proceeds of the tax which were collected prior to November, 1978?

The statute is clear that 10 percent of the proceeds of the tax levied in Chapter 20 Title 40, **Code of Alabama 1975,** upon the production of gas and oil is due to be distributed to the municipality within the jurisdiction of which the wells are located. Because it was not known that there were wells within the jurisdiction of the Town of Pollard the tax collected prior to that distributed in November, 1978, was distributed without consideration of the 10 percent due Pollard. I am informed that the amount of tax collected on oil and gas produced from the wells in Pollard preceding the discovery that these wells were in fact within the jurisdiction of Pollard is known or can be computed from the records of the Department of Revenue and the Oil and Gas Board.

According, it is the opinion of this office that the comptroller should distribute to the Town of Pollard such additional sums from the future proceeds of the tax upon the production of those wells within the jurisdiction of the Town of Pollard as would make up the deficiency of distribution. It is suggested that these additional sums be calculated so as not to cause serious disruption of the fiscal plans of the other entities to which these tax proceeds are distributed.

Sincerely,

CHARLES A. GRADDICK
Attorney General

May 24, 1979

Senator Don Harrison
516 S. Perry Street
Montgomery, Alabama 36104

Mobile home ad valorem taxation and licenses.

A mobile home bought in one county, and licensed there, then temporarily taken into another county need not be licensed in the second county.

Opinion by Assistant Attorney General Davis.

Dear Senator Harrison:

In your letter of April 30, 1979, addressed to this office you request an opinion as to whether, **vel non,** a mobile home bought in one county and licensed there, then temporarily taken into another county, must be licensed in the second county?

The answer to your question is found in **Code of Alabama 1975,** Section 40-12-255 which provides, **inter allia:**

> "Every person . . . who . . . owns a house trailer, except a house trailer which has been assessed for ad valorem taxation as a part of the realty, shall pay an annual registration fee of $3.00; . . . The registration fee hereby provided for shall be paid **in the county in which such trailer is customarily kept . . .** " (Emphasis added)

In view of the language of the statute just quoted, it is the opinion of this office that a mobile home bought in one county and licensed there, then temporarily taken into another county need not be licensed in the second county.

Sincerely,

CHARLES A. GRADDICK
Attorney General

May 24, 1979

Honorable William S. Halsey
Municipal Judge, City of Heflin
P.O. Box 128
Heflin, Alabama 36264

Uniform Traffic Citation—Municipal Court

Uniform traffic Citation should be forwarded to Department of Public Safety although sentence for traffic violation in

municipal court is commuted by mayor and/or fines are remitted.

Opinion by Assistant Attorney General Knight.

Dear Judge Halsey:

The Attorney General received your request for an opinion as to whether after a conviction for driving while intoxicated or driving while license is suspended or revoked by a municipal judge, the mayor remits the fine and/ or suspends the sentence, does the requirement to forward the Uniform Traffic Citation to the Department of Public Safety still hold.

Your question is to be answered in the affirmative.

Code of Alabama 1975, Section 12-14-15 provides that a mayor may remit fines and cost and commute sentences imposed by a municipal court or the court to which an appeal was taken for violation of a municipal ordinance.

The Director of Public Safety is required by law to keep a record of all traffic violation convictions. This is done by forwarding a copy of the court records including the traffic citation to him in order that the individual record of the licensee may be ascertainable for consideration upon application for renewal of a driving license by the licensee.

Although the sentence is commuted and fines are remitted by a mayor, the conviction of a traffic violation still remains on the records. Therefore, the uniform traffic citation should still be forwarded to the Department of Public Safety with a notation of the remission of the fine and/or commutation of the sentence by the mayor.

If our office can be of further assitance, please do not hesitate to call on us.

Sincerely,

CHARLES A. GRADDICK
Attorney General

May 24, 1979

Honorable Fob James
Governor of Alabama
State Capitol
Montgomery, Alabama 36130

State Board of Medical Examiners—Alabama Board of Nursing—Regulations

Guidelines governing the practice of professional nursing

are legal and valid only when approved and adopted by both the State Board of Medical Examiners and the Board of Nursing

Opinion by Assistant Attorney General LeCroy

Dear Governor James:

I am writing in response to your letter of May 11, 1979, requesting an opinion from this office on the following question:

> "Regarding the attached set of guidelines, I am requesting an opinion on the legality of these guidelines in relation to whether the State Board of Medical Examiners can issue such guidelines over the Nursing Profession."

Your attention is directed to an opinion issued by this office on March 2, 1978, which addresses this question. A copy of this opinion is attached.

Your attention is also directed to the language of **Code of Alabama 1975,** §34-24-1(3) which provides, in that portion quoted in the preparatory sentence of the suggested guidelines, that the practice of professional nursing shall include those acts recognized as proper by the Board of Medical Examiners and the Board of Nursing. If the proposed guidelines have been recognized and approved by both the Board of Medical Examiners and the Board of Nursing then they would appear to be legal, valid and enforceable. However, it conclusively appears from the expressed language of the statute that the Board of Medical Examiners has no authority to unilaterally regulate the practice of professional nursing and any attempt to do so would be illegal.

I hope I have fully answered the question contained in your letter, and if I can be of any further assistance to you in this matter, please do not hesitate to contact me.

Sincerely,

CHARLES A. GRADDICK
Attorney General

* * * * * * *

March2, 1978

Miss Betty Tomlin, R. N.
Executive Officer
Alabama Board of Nursing
Suite 203, One/East Building
500 Eastern Boulevard
Montgomery, AL 36109

Board of Nursing — Regulations

Board of Medical Examiners Guidelines For Non-

Physicians Performing Specialized Medical Functions invades the regulatory authority of the Board of Nursing.

Opinion by Assistant Attorney General David W. Clark.

Dear Miss Tomlin:

This will acknowledge your letter of February 17, 1978, with enclosure, said letter reading as follows:

> "The Alabama Board of Nursing requests a ruling as to the legality of the enclosed document in relation to the Law Regulating the Practice of Professional and Practical Nursing, Act 867, As Amended by Act No. 427, Regular Session, 1975.
>
> "Specifically, does the enclosed document invade the authority of the Board of Nursing in setting standards and regulating the practice of nursing in this State?

The syllabus of Act No. 427, General and Local Acts, 1975, sets out the purpose of the Board of Nursing as follows:

> "To further amend Sections 2, 3, 4, 5, 6, 7 and 8 of Act No. 867, S. 210, Regular Session 1965, [Acts 1965, p. 1615; now appearing in Code of Alabama, Recompiled, 1958, as Title 46, Sections 189 (33 thru 47)], as amended, and entitled 'An Act to better provide for the public health by providing for the regulation and approval of schools of nursing, for the examination, regulation and licensing of professional and practical nurses; to create and define the powers of the Board of Nursing and the Advisory Council for practical nursing; to provide for the appointment and prescribe the terms of office, duties and compensation of members of such Board and of such Council; to provide for disciplining licensees and for appeals from decisions of the said Board; to prescribe penalties for violation of the provisions of this Act; and to make further provisions for the purpose of carrying out this Act, and to repeal conflicting statutes."

Act No. 427, supra, is found in **Code of Alabama 1975,** § 34-21-1 through 34-21-26.

Code of Alabama 1975, § 34-21-1 sets out the following definitions:

> "(3) PRACTICE OF PROFESSIONAL NURSING. The performance, for compensation of any act in the care and counseling of persons or in the maintenance of health and prevention of illness based upon systematic data gathering, assessment, appropriate nursing judgment and evaluation of human responses to actual or potential health problems through such services as case finding, health teaching, health counseling; and pro-

vision of care supportive to or restorative of life and well being, and executing medical regimens prescribed by a licensed or otherwise legally authorized physician or dentist. A nursing regimen shall be consistent with and shall not vary any existing medical regimen. Additional acts requiring appropriate education and training designed to maintain access to a level of health care for the consumer may be performed under emergency or other conditions which are recognized as proper to be performed by a registerd nurse.

"(4) PRACTICE OF PRACTICAL NURSING. The performance, for compensation, of acts in the care of persons under the direction of a licensed professional nurse or a licensed or otherwise legally authorized physician or dentist requiring an understanding of nursing but not requiring the substantial specialized skill, independent judgment and knowledge required in the practice of professional nursing."

And under **Code of Alabama 1975,** § 34-21-2, is the following:

"The board is authorized to:

"(1) Adopt and, from time to time, revise such rules and regulations, not inconsistent with law, as may be necessary to carry out the provisions of this chapter, provided that prior to the enactment of any proposed changes, additions or deletions in said rules and regulations, one week's notice must be given by publishing the text of the proposals in no less than two broadly circulated newspapers of the state.

"Nothing in this chapter shall be construed as limiting the rights of affected parties to appeal decisions of the board with regard to rules and regulations promulgated hereunder;

"(2) Prescribe standards and approve curricula for educational programs preparing persons for licensure under this chapter."

Thus, it can be readily seen that regulation of the nursing profession has been given to the Board of Nursing by Act No. 427, supra. The exemptions to such regulation are set out in **Code of Alabama 1975,** §34-21-6 as follows:

"This chapter does not prohibit: the furnishing of nursing assistance in an emergency; the practice of any legally qualified nurse of another state, who is employed by the United States government or any bureau, division or agency thereof, while in the discharge of his or her official duties; the practice of nursing by students enrolled in approved schools of nursing, as may be incidental to their course of study, nor shall it prohibit such students working as nursing aides; persons, including nursing aides, orderlies and attendants, carrying out duties necessary for the support of nursing services, including

those duties which involve supportive nursing services performed in hospitals and elsewhere under the direction of licensed physicians or dentists, or under the supervision of professional nurses licensed hereunder, nor gratuitous nursing of the sick by friends or members of the family, nor the care of the sick when done in accordance with the practice of religious principles or tenets of any well recognized church or denomination which relies upon prayer or spiritual means alone for healing. (Acts 1965, No. 867, p. 1615. §12.)"

And, while no doubt well-intentioned, the Board of Medical Examiners Guidelines For Non-Physicians Performing Specialized Medical Functions, adopted by the Medical Examiners, January 18, 1978, does invade the jurisdiction and the authority to regulate nursing given to the Board of Nursing by the Legislature of Alabama by Act No. 427, supra.

The Guidelines merge nurses with the undefined "other trained personnel" and would, in effect, phase out this noble profession.

Obviously, some of the duties set out in the Guidelines would come under the exemptions set out in §34-21-6, supra, and the Board of Nursing would not regulate these "personnel."

The only rules and regulations pertaining to regulation of nursing coming under the jurisdiction of the Board of Medical Examiners is the regulation of the practice of midwifery. Act No. 499, General and Local Acts 1976, provides that both the State Board of Nursing and the Board of Medical Examiners shall have authority to do so and this has been accomplished by joint action of the two boards.

I trust this will give you the information needed.

Yours very truly,

WILLIAM J. BAXLEY
Attorney General

June 11, 1979

Honorable George C. Dean, Jr.
State Comptroller
Alabama State Department of Finance
Division of Control and Accounts
State Capitol
Montgomery, AL 36130

Ad Valorem Tax — Tax Collector's Penalty

Forfeiture by tax collectors for failure to timely file settlements required by law may be excused

by comptroller when failure is unavoidable by tax collector and is due to circumstances beyond his control.

Opinion by Assistant Attorney General Solomon.

Dear Mr. Dean:

Your request for an opinion dated April 18, 1979 reads as follows:

> "It has recently come to my attention that several county tax collectors are having difficulty in preparing reports that are required to be filed in this office. To be specific, the Ad Valorem Tax Reappraisal Program, and problems incident thereto, have made it impossible for the tax collectors of several counties to comply with the requirements of Title 40-5-44 of the 1975 Code of Alabama. This title of the code requires a tax collector to forfeit ten dollars per day after July 10th for failure to make final settlement with this office. Since the delays will be caused by circumstances completely beyond the tax collector's control, I propose this question to you: "Is there a legal way for me to grant an extension of time to tax collectors under such circumstances as I have set out above?"

The provisions of §40-5-44, **Code of Alabama 1975** to which you refer in your request for an opinion, states:

> "For failure of any tax collector to make any of the settlements herein required to be made by July 10 of each year, he shall forfeit $10.00 per day, which shall be deducted from the amount of commissions due and payable to him on such settlements respectively; and it shall be the duty of the comptroller, or the county treasurer, or the custodian of the county funds, as the case may be, to withhold all commissions in cases where settlements are not made by July 10 of each year."

Your request for an opinion reveals that the tax collectors of several counties will be unable to perform their duty to make final settlements of ad valorem taxes in the time period required by law because of circumstances beyond their control, viz, the delay caused by the ad valorem tax reappraisal program. If the final settlements are not made by the date fixed by law a forfeiture is required to be assessed at the rate of $10.00 per day for each late day. The question to be decided is whether the forfeiture may be excused when the lateness in filing such final settlements is brought about by circumstances outside the control of the tax collectors which make it impossible for them to make such settlements in the time allowed by law.

The purpose of enacting legislation requiring settlements to be made at specified times was to insure that tax collectors act with due diligence in collecting taxes, remitting them to the proper official, and filing reports and a final settlement in a timely fashion. The statute

was intended to penalize those who through their own fault or negligence failed to make the settlements as required by law. In the case at hand however, the delay was not caused by the negligence of or through any fault of the tax collectors. Instead the delay is caused by the reappraisal program.

73 Am. Jur. 2d, Statutes, §263, states:

> "It is to be presumed that the Legislature did not intend a law to work a hardship or an oppressive result. Thus, where a statute is ambiguous in terms or fairly susceptible of two constructions, the hardship which may follow one construction or the other may properly be considered. A construction should be avoided which would render the statute productive of unnecessary hardship, abuse, harsh or harmful consequences, or oppression or would arm one person with a weapon to impose hardships on another. **If extreme hardship will result from a literal application of a statute, this may be taken as evidence that the legislature did not use them literally."** Emphasis supplied)

In this situation a literal interpretation of the statute will cause extreme hardships. An elected public official or officials will be required to pay penalties for failure to perform an impossible task. Certainly the legislature did not have this in mind in the enactment of §40-5-44, **Code of Alabama, 1975.** An interpretation requiring the payment of a penalty under these circumstances would be unreasonable, irrational, and unjust. I therefore am of the opinion that based on the circumstances set out herein when the tax collectors are late in filing their final settlements with the state comptroller and where such lateness is not due to the fault or negligence of the tax collectors themselves that you are not required to collect the forfeiture heretofore mentioned.

Sincerely,

CHARLES A. GRADDICK
Attorney General

June 27, 1979

Honorable J. Rufus Bealle
Secretary and General Counsel
University of Alabama Board of Trustees
Post Office Box BT
University, AL 35486

Education—University of Alabama—Compromise

The University of Alabama may assign "uncollectible"

student loans to HEW in consideration of continuing student loan program.

Opinion by Assistant Attorney General Solomon.

Dear Mr. Bealle:

Your request for an opinion of this office submitted on behalf of The Board of Trustees of the University of Alabama dated June 18, 1979, has been received as follows:

"The University on each of its three campuses is a participant in the National Direct Student Loan Program, 20 U. S. C. A. 1087aa et seq., which provides for loans to students in participating institutions of higher learning at low interest rates. A participating institution is charged with the establishment and maintenance of a student loan fund from which the subject loans are made. One-tenth of the University's loan fund consists of University funds, none of which represent legislative appropriations. The loan fund is replenished as payments are received on mature loan debts, pursuant to the terms of a promissory note executed by the student.

"Until recently, the participating institutions had full responsibility for collecting delinquent loans. However, Congress has recently authorized the Department of Health, Education and Welfare to accept assignments of delinquent notes, thus relieving the institutions of the task, 20 U. S. C. A. 1087cc(a) (5). The Department has retained the services of a private collection agency to provide collection services. All monies collected by HEW will be deposited in the general fund of the Treasury, none will be returned to the assigning institution.

"If an institution assigns any such 'uncollectible' loans to HEW before midnight June 30, 1979, the amount of such an assignment will no longer appear in the delinquency computation for the school. Secretary Califano has given indication that institutions with unreasonably high delinquency rates will be barred from participation in the NDSL program in the future. In his 'Memorandum to the Presidents of Institutions Participating in the National Direct Student Loan Program,' dated January 29, 1979, the Secretary states:

"[T]o encourage institutions to act promptly, loans assigned to the Office of Education **during the next** year will not be included in the calculation of an individual institution's default rate.

"I have asked the Commissioner of Education to develop proposed regulations for the 1980-81 academic year that will set performance standards for the reduction of institutional default rates. The proposed regulation will provide that institutions

which do not meet these standards will receive no further NDSL funds from the Federal Government. Performance will be evaluated on the basis of fiscal operations reports submitted for the period June 30, 1978 to June 30, 1979.

"The University's Tuscaloosa campus would like to assign some $500,000.00 in uncollectible loan notes to HEW. The subject loans are all from the 1960s and are all subject to a defense of the expiration of the statute of limitations. All of the subject accounts have been thoroughly serviced by internal collection personnel, and external collection agency, and the University's legal department. It has been impossible to reduce the subject loans to judgement because of inability to locate the debtor. The assignment of the aforementioned loans would reduce the delinquency rate to approximately 8%, well below the national average, and thus insure the continued availability of this valuable loan program to students of the University.

* * * * * * * *

"Although the University will receive no direct monetary remuneration for its assignment, such as assignment is provided for under federal law, will provide opportunity for the federal government to attempt collections, and will insure our continued participation in the NDSL program."

I note further that the University has been advised by the Regional Administrator of the Department of Health, Education, and Welfare that University's student loan default rate was above acceptable standards and that it would have to be reduced by June 30, 1979, in order for the University to remain in the student loan program.

It is apparent that the continuance of the student loan program is highly desirable. The program provides funds for loans to students on a 90-10 matching basis with the University's 10% being provided from non-appropriated funds.

It is my opinion that the outstanding and apparently "uncollectible" loans may be assigned to the Department of Health, Education, and Welfare under the terms and conditions set out in your request.

This action does not violate Section 100 of the Constitution of Alabama of 1901 because it does not result in the discharge or compromise of these obligations. To the contrary, intensive efforts will be made by the United States Government to collect the maximum amount possible. Thereafter through the assignment the University of Alabama and the citizens and taxpayers of the State of Alabama will receive full and satisfactory consideration, viz, the continuation of the student loan program. This will result in the receipt of hundreds of thousands of dollars for additional loans to help educate the students of the University. The continuation of the program and the receipt of such

funds constitute consideration in excess of the face value of the defaulted loans.

Furthermore, such assignment would not be in violation of **Code of Alabama 1975,** §36-10-5, because there would be no personal gain by any official of the University. The assignment would be made in compliance with federal law and would be in the best interest of the University.

For the foregoing reasons, your inquiry is answered in the affirmative.

Very truly yours,

CHARLES A. GRADDICK
Attorney General

June 29, 1979

Mr. J. Ben Swindle
Director
State Agency for Social Security
Montgomery, Alabama 36130

Hospitals—Social Security—City of Huntsville.

Code of Alabama 1975, §22-21-1, and following, authorizes the establishment of public hospital corporations.

Opinion by Philip C. Davis, Assistant Attorney General.

Dear Mr. Swindle:

You request of this office, by letter dated May 28, 1979, an opinion regarding the following question: "Is the City of Huntsville Hospital Board a public corporation under Alabama law?"

This Board was established pursuant to **Code of Alabama 1975,** §§22-21-1, and following, and incorporated under §22-21-5, supra, on March 24, 1964. These statutes clearly authorize the establishment of public corporations, and any entity organized pursuant thereto is, accordingly a public corporation.

The answer to your question is affirmative. The City of Huntsville Hospital Board is a public corporation under Alabama law.

Sincerely,

CHARLES A. GRADDICK
Attorney General

June 29, 1979

Honorable William J. Davis
Director
Department of Industrial Relations
State of Alabama
Montgomery, Alabama 36130

Courts—Agencies—Fees.

The Department of Industrial Relations and other similarly situated State Agencies are required to pay a docket fee for any civil action brought in the name of and on behalf of the State of Alabama.

Opinion by Assistant Attorney General Breland.

Dear Mr. Davis:

This is in response to your request for an opinion of this office of April 26, 1979, in which you asked whether the Department of Industrial Relations and other similarly situated State Agencies must pay a docket fee for a civil action brought in the name of and on behalf of the State of Alabama.

In answer to your question, it is my opinion that State Agencies must pay docket fees for civil actions brought on behalf of the State of Alabama. **Code of Alabama 1975,** Section 6-5-1, provides that actions commenced by the State are to be governed by the same rules as actions between individuals. I read this section to mean that the State is responsible for filing fees the same as an individual. It is true that Section 6-5-1(a) provides that the State may commence an action in its own name and is entitled to all remedies provided for the enforcement of rights between individuals without giving bond or security or causing an affidavit to be made. It is also true that there are other Code sections which specifically exempt the state from paying a filing fee. See, e.g., **Code of Alabama 1975,** Section 30-4-96.

Because Section 6-5-1(a) specifically exempts the State from posting bond or security, and because there are other provisions in the Code which exempt the State from paying docket fees, by negative implication the State would be responsible for all fees not specifically exempted.

Therefore, I am of the opinion that the State is liable for docket fees the same as an individual except in those cases where there is a specific exemption.

I hope that I have answered your question.

Sincerely,

CHARLES A. GRADDICK
Attorney General

INFORMAL OPINIONS

During the period April 1, 1979 through June 30, 1979, the Attorney General rendered the following informal opinions.

Subject	Addressee	Date	File
	— A —		
ADOPTION			
Adopting parents—Natural Parents—See Probate Records in Adoption Proceedings	John W. Jones, Jr.	Apr. 11	118
AD VALOREM TAX			
Ad Valorem Tax—Curtilage—Tax Assessor	Dorothy S. Carmichael	Apr. 26	144
Ad Valorem Tax—Reappraisal—Taxation	H. B. Wise	Apr. 26	143
Ad Valorem Tax—Tax Assessors	W. P. Farrar	May 16	164
Owner of Property—October 1—Liable for Ad Valorem Tax for Tax Year	Sara R. McMullen	May 24	174
ADVERTISING			
Commission may require real estate licensee to advertise as licensed	Mary L. Goodwin	June 6	Real Estate Comm.
ALABAMA ALCOHOLIC BEVERAGE CONTROL BOARD			
Funds—ABC Board—Purchase	Jimmy Evans	May 16	161
Illegal Drugs ABC Board—Beer Tax—Talladega County	John A. Teague	May 24	170

Subject	File	Addressee	Date
ALABAMA COMMISSION ON HIGHER EDUCATION			
ACHE—Power of Attorney—Student Aid Recipients	John F. Porter	May 16	ACHE
AMBULANCE SERVICE			
County—County Hospital—Operate Ambulance Service	Richard H. Poellnitz	Apr. 26	142
ANDALUSIA, CITY OF			
Councilmember—Family-held Corporation—Not do Business with City	Chalmers Bryant	Apr. 6	116
ANNEXATION			
City of Lanett—Annexation	Claud E. McCoy	May 16	162
APPROPRIATIONS			
Proration of Education Appropriations—Authority of the Governor	Robert E. Albright	Apr. 12	97
ATTALLA, CITY OF			
Cities—Transfer Property to Industrial Development Board	Clarence F. Rhea	June 11	189
AUBURN, CITY OF			
City of Auburn—Public Records—Fees	Arnold W. Umbach, Jr.	Apr. 26	141
AUBURN UNIVERSITY			
Auburn University—Competitive Bid Law—Contracts	Harry M. Philpott	May 3	157
City of Opelika—Contribute Funds to Auburn University—Capital Improvement	Guy Thompson	June 11	192

AUDITOR			
Auditor—Competitive Bid Law—Contracts	Bettye Frink	Apr. 26	Auditor
— B —			
BAIL BONDSMAN			
Bail Bondsman—Meet requirements of **Code of Alabama 1975,** §15-13-22	Mary C. Burgreen	May 3	147
BANKS AND BANKING			
Banks—Conflict of Interest—County Commission	James H. McClendon	May 3	145
Banks—Licenses—Taxation	Velma B. Hosey	May 17	168
Board of Education—Blount County—Banks and Banking	Donald O. Standridge	June 11	190
BARBOUR COUNTY			
Barbour County—Salaries—Sheriffs	J. Gorman Houston, Jr.	May 16	165
BEER TAX			
ABC Board—Beer Tax—Talladega County	John A. Teague	May 24	170
BIBB COUNTY			
County Commission Chairman—Authority to Hire Personnel, §§11-8-7 and 11-8-8	George A. Desmond	May 3	55
Bibb County—Sheriffs—Expense Allowance	Glenn M. Smitherman	May 24	173
BLOUNT COUNTY			
Board of Education—Blount County—Banks and Banking	Donald O. Standridge	June 11	190

Subject	Addressee	Date	File
BONDS			
State Fire Marshal—Adopt Federal Mobile Home Standards	Albert J. Winfield	Apr. 26	Insurance
Bonds—Education—Funds	S. D. Bishop Wayne Teague	May 31	175
BRENT, CITY OF			
City of Brent—City of Centreville—Competitive Bid Law—Contracts	Cecil Crews	May 3	146
BUILDING PERMITS			
Building Permits—City of Monroeville—Subdivisions	B. C. Hornady	June 29	195
— C —			
CALHOUN COUNTY			
Calhoun County—Health Department—Mental Health Centers	Jack D. Boozer	May 24	172
CARBON HILL, CITY OF			
City Clean Drains—Right-of-Way Crossing Private Property	Sam Stewart	May 31	176
CENTREVILLE, CITY OF			
City of Brent—City of Centreville—Competitive Bid Law—Contracts	Cecil Crews	May 3	146
CHIROPRACTORS			
Medicaid—Not Pay for Chiropractic Services	Jack E. Worthington	June 29	Medical Services Adm.

CIRCUIT CLERKS AND REGISTERS			
Circuit Clerks—Compensation—Walker County	Sylvester Anton	Apr. 26	130
CIVIL DEFENSE			
Disaster—Administrative Authority—Civil Defense	Joe B. Hedrick	May 10	Civil Defense
CLARKE COUNTY			
Clarke County—Industrial Development Board—Jury Commission—Office of Profit	John E. Adams	June 29	198
COLLEGES AND UNIVERSITIES			
Municipality—Resurface and Maintain Dormitory Parking Lot—Gadsden State Junior College	Joe M. Ford	Apr. 30	154
COMMUNITY DEVELOPMENT PROJECT			
City of Decatur—Empowered to Proceed with Community Development Project	Bill J. Dukes	Apr. 11	122
COMPENSATION			
Etowah County—Sheriff—Compensation	Jack Floyd	Apr. 11	119
Circuit Clerks—Compensation—Walker County	Sylvester Anton	Apr. 26	130
Expenses—Compensation—Officers and Offices	Bettye Frink	June 11	Auditor
COMPETITIVE BID LAW			
Auditor—Competitive Bid Law—Contracts	Bettye Frink	Apr. 26	Auditor
Preparation of Pamphlet—Not Subject to Bid Law—Printing Is	Joseph T. Smitherman	Apr. 26	138

Subject	Addressee	Date	File
City of Brent—City of Centreville—Competition Bid Law—Contracts	Cecil Crews	May 3	146
Auburn University—Competitive Bid Law—Contracts	Harry M. Philpott	May 3	157
Negotiated Reductions—Contracts—Competitive Bid Law—Education	W. A. Stevenson	June 15	Building Commission
Private Non-Profit Corporation—Build Chapel—Donate to State Agency	George M. Phyfer	Apr 26	Youth Services
Competitive Bid Law—Contracts—Revenue Department—Computers	Ralph P. Eagerton, Jr.	June 27	Revenue
COMPUTERS			
Competitive Bid Law—Contracts—Revenue Department—Computers	Ralph P. Eagerton, Jr.	June 27	Revenue
COMPTROLLER			
City of Pollard—State Comptroller—Taxation	Curtis Finley	May 17	169
CONDEMNATION			
Probate Judge—Eminent Domain/Condemnation—Municipalities—City of Decatur	Bobby Day	Apr. 11	121
CONECUH COUNTY			
County Commission—Not Pay Dues—Private Association	David L. Burt, Jr.	May 31	179
CONFLICTS OF INTEREST			
Industrial Development Board—Not Sell Property to Chairman	Brent Barrontine	Apr. 12	127

Sheriff—Not Designate Wife as Guard	Roy C. Snead, Jr.	Apr. 2	126
Councilmember—Family-held corporation—Not do Business with City	Chalmers Bryant	Apr. 6	116
Water Improvement Commission—Not Also Serve on Board of Equalization	John M. McMillan, Jr.	Apr. 26	132
Water Improvement Commission—Not Also Serve on Board of Equalization	Robert Gulledge	Apr. 26	131
Banks—Conflict of Interest—County Commission	James H. McClendon	May 3	145
Executive Officer of Healing Arts Board—Also Serve as Special Assistant Attorney General	George Hardesty, Jr.	May 10	Healing Arts Bd.

CONTRACTS

Industrial Development Board—Not Sell Property to Chairman	Brent Barrontine	Apr. 12	127
Preparation of Pamphlet—Not subject to Bid Law—Printing Is	Joseph T. Smitherman	Apr. 26	138
Auditor—Competitive Bid Law—Contracts	Bettye Frink	Apr. 26	Auditor
Auburn University—Competitive Bid Law—Contracts	Harry M. Philpott	May 3	157
City of Brent—City of Centreville—Competitive Bid Law—Contracts	Cecil Crews	May 3	146
Personal Property—Place on State Department Inventory	Gary Cooper	May 17	Pensions & Security
Real Estate Licensee—Not use inducements to secure clients	Mary Goodwin	May 24	Real Estate Commission
Negotiated reductions—Contracts—Competitive Bid Law—Education	W. A. Stevenson	June 15	Building Comm.
Contracts—Fire Districts—Municipalities	Patrick H. Boone	June 29	200

Subject	Addressee	Date	File
Private Non-Profit Corporation—Build Chapel—Donate to State Agency	George M. Phyfer	Apr. 26	Youth Services
Competitive Bid Law—Contracts—Revenue Department—Computers	Ralph P. Eagerton, Jr.	June 27	Revenue
COOSA COUNTY			
County—Not work on private roads	Jasper Fielding	Apr. 26	100
CORONERS			
Town Council Member—Be Appointed to Gas and Water Board—Not Serve as Deputy Coroner	William J. Murray	June 11	185
CORPORATIONS			
Councilmember—Family-held Corporation—Not do Business with City	Chalmers Bryant	Apr. 6	116
CORRECTIONS, BOARD OF			
Prisons and Prisoners—Confidentiality of Inmates' Files	R. G. Britton	June 11	Corrections
COSMETOLOGY, BOARD OF			
Exemption—County—Cosmetology Act—Prohibited	Billie K. Jehle	May 24	Cosmetology
COSTS AND FEES			
$5 Service Fee—Charged to Defendant—Bond Forfeiture Action	Jean A. Scott	May 31	178
COUNTIES			
Counties—Courts—Judicial Compensation Commission	Hiram Pitts	May 25	99

COUNTY COMMISSION

Authority to Pardon or Parole—County Inmate—Vested in State Board of Pardons and Parole	H. Clemons Roe	Apr. 11	120
County Commission—Roads and Bridges—Equipment	Robert H. Kirksey	Apr. 26	76
County Commission Chairman—Authority to Hire Personnel, §§11-8-7 and 11-8-8	George A. Desmond	May 3	55
Banks—Conflict of Interest—County Commission	James H. McClendon	May 3	145
County Commission—Not Pay Dues—Private Association	David L. Burt, Jr.	May 31	179

COURTS

$5 Service Fee—Charged to Defendant—Bond Forfeiture Action	Jean A. Scott	May 31	178
Counties—Courts—Judicial Compensation Commission	Hiram Pitts	May 25	99
Judges—District Courts—Salaries—Walker County	Horace H. Nation, III	June 11	191

CURTILAGE

Ad Valorem Taxes—Curtilage—Tax Assessor	Dorothy S. Carmichael	Apr. 26	144

— D —

DECATUR, CITY OF

City of Decatur—Empowered to Proceed with Community Development Project	Bill J. Dukes	Apr. 11	122

Subject	Addressee	Date	File
DEFERRED COMPENSATION PLAN			
City—Adopt Deferred Compensation Plan	James E. Wilson	Apr. 11	117
DISTRICT ATTORNEYS			
District Attorneys—Funds—Salaries	Robert E. Morrow	June 29	201
District Attorneys—Fees—Funds	Edward W. Boswell	June 29	196
— E —			
EDUCATION			
City Board of Education—Convey Property to Non-Profit Organization—For Adequate Consideration	Jerry Batts	Apr. 26	137
Toxicology—Education—Juveniles	Carlos L. Rabren	May 3	Toxicology
Proration of Education Appropriations—Authority of the Governor	Robert E. Albright	May 12	97
Special Education—Classroom Facilities Discussed	J. Carlton Smith	Apr. 25	167
ACHE—Powers of Attorney—Student Aid Recipients	John F. Porter, Jr.	May 16	ACHE
Bonds—Education—Funds	S. D. Bishop Wayne Teague	May 31	175
Board of Education—Blount County—Banks and Banking	Donald O. Standridge	June 11	190
Education—Salaries—Teachers	Joe R. Carothers, Jr.	June 29	197
Negotiated Reductions—Contracts—Competitive Bid Law—Education	W. A. Stevenson	June 15	Building Comm.

ELECTIONS

Deputy Sheriff—Elections—Merit Systems	Beasor Walker	Apr. 26	135
Elections—Probate Judges—Vacancies	Don Siegelman	May 24	Secretary of State

EMINENT DOMAIN

Probate Judge—Eminent Domain/ Condemnation—Municipalities— City of Decatur	Bobby Day	Apr. 11	121

EMPLOYMENT, EMPLOYERS, EMPLOYEES

City—Adopt Deferred Compensation Plan	James E. Wilson	Apr. 11	117
Historical Commission—Personnel—Funds—Live in a Landmark Council	Walter Owens	Apr. 11	36
Deputy Sheriff—Elections—Merit Systems	Beasor B. Walker	Apr. 26	135
Employees—Sheriffs—Tuscaloosa County	Beasor B. Walker	Apr. 26	135
License Inspector—Not Be Employed as Clerk—Probate Office	John W. Jones, Jr.	May 31	118

EQUALIZATION, BOARD OF

Water Improvement Commission Member—Not Also Serve on Board of Equalization	Robert Gulledge	Apr. 26	131
Water Improvement Commission Member—Not Also Serve on Board of Equalization	John M. McMillan, Jr.	Apr. 26	132

EQUIPMENT

County Commission—Roads and Bridges—Equipment	Robert H. Kirksey	Apr. 26	76

Subject	Addressee	Date	File
ESCROW			
Highway Department—Retainage—Escrow	Rex K. Rainer	Apr. 26	Highway Dept.
ETOWAH COUNTY			
Etowah County—Sheriff—Compensation	Jack Floyd	Apr. 11	119
Withholding Tax—Wages—Etowah County	Ralph P. Eagerton, Jr.	Apr. 11	Revenue
EXECUTIONS			
Executions—Sheriffs—Costs	Ralph P. Eagerton, Jr.	May 3	Revenue
EXEMPTIONS			
Transported Limestone—Exempt Commodity	Juanita W. McDaniel	Apr. 26	PSC
Exemptions—Sales Tax—Taxation	George D.H. McMillan, Jr.	May 24	Lt. Gov. Office
Exemption—County—Cosmetology Act—Prohibited	Billie K. Jehle	May 24	Cosmetology
EXPENSE ALLOWANCE			
Bibb County—Sheriffs—Expense Allowance	Glenn M. Smitherman	May 24	173
EXPENSES			
Expenses—Compensation—Officers and Offices	Bettye Frink	June 11	Auditor
— F —			
FEES			
City of Auburn—Public Records—Fees	Arnold W. Umbach, Jr.	Apr. 26	141
Garnishment Fee—Collected at Time Garnishment Proceeding is Initiated	Jean Scott	June 11	178
District Attorneys—Fees—Funds	Edward W. Boswell	June 29	196

FIREARMS			
Sheriff—Not Return Pistol on Plea of Guilty	James Earl Johnson	May 24	140
FIRE DISTRICTS			
Contracts—Fire Districts—Municipalities	Patrick H. Boone	June 29	200
FIRE MARSHAL			
State Fire Marshal—Adopt Federal Mobile Home Standards	Albert J. Winfield	Apr. 26	Insurance
FLORENCE, CITY OF			
City—Adopt Deferred Compensation Plan	James E. Wilson	Apr. 11	117
FORT PAYNE, CITY OF			
City of Fort Payne—Industrial Development Board—Public Works	Fred W. Purdy	June 29	199
FUNDS			
Historical Commission—Personnel—Funds—Live in a Landmark Council	Walter Owens	Apr. 11	36
Bonds—Education—Funds	S. D. Bishop Wayne Teague	May 31	175
County Commission—Not Pay Dues—Private Association	David L. Burt, Jr.	May 31	179
City of Opelika—Contribute Funds to Auburn University—Capital Improvement	Guy Thompson	June 11	192
Funds—City of Graysville—Private Work	Maurice C. West	June 11	182
District Attorneys—Fees—Funds	Edward W. Boswell	June 29	196
District Attorneys—Funds—Salaries	Robert E. Morrow	June 29	201

Subject	Addressee	Date	File
	— G —		
GADSDEN, CITY OF			
Municipality—Resurface and Maintain Dormitory Parking Lot—Gadsden State Junior College	Joe M. Ford	Apr. 30	154
GADSDEN STATE JUNIOR COLLEGE			
Municipality—Resurface and Maintain Dormitory Parking Lot—Gadsden State Junior College	Joe M. Ford	Apr. 30	154
GARNISHMENTS			
Garnishment Fee—Collected at Time Garnishment Proceeding is Initiated	Jean Scott	June 11	178
GENEVA, CITY OF			
County and/or City—Render Service for Parks and Recreation Facility	Hugh Herring	May 3	149
GENEVA COUNTY			
County and/or City—Render Service for Parks and Recreation Facility	Hugh Herring	May 3	149
GOVERNOR			
Governor—State Health Planning and Development Office	Fob James	May 3	Governor's Office
Proration of Education Appropriations—Authority of the Governor	Robert E. Albright	Apr. 12	97
Disaster—Administrative Authority—Civil Defense	Joe B. Hedrick	May 10	Civil Defense

GRAYSVILLE, CITY OF			
Funds—City of Graysville—Private Work	Maurice C. West	June 11	182
— H —			
HALE COUNTY			
County—County Hospital—Operate Ambulance Service	Richard H. Poellnitz	Apr. 26	142
HEALING ARTS BOARD			
Executive Officer of Healing Arts Board—Also Serve as Special Assistant Attorney General	George Hardesty, Jr.	May 10	Healing Arts Bd.
HEALTH AND HEALTH DEPARTMENT			
Calhoun County—Health Department—Mental Health Centers	Jack D. Boozer	May 24	172
Winston County—Taxation—Health Facilities	Hobson Manasco, Jr.	May 31	181
HIGHWAY DEPARTMENT			
County—Not Work on Private Roads	Bruce Gargis	Apr. 26	15
County—Not Work on Private Roads	Jimmy Byars	Apr. 26	98
County—Not Work on Private Roads	Jasper Fielding	Apr. 26	100
Highway Department—Retainage—Escrow	Rex K. Rainer	Apr. 26	163
Highway Department—Not required to Maintain County Roads	Mike Weeks Robert Hall Don Harrison William B. Dunn	May 16	Highway

Subject	Address	Date	File
HISTORIC CHATTAHOOCHEE COMMISSION			
Historic Chattahoochee Commission Employees—Not Eligible for State Employees Insurance Program	Douglas C. Purcell	June 11	188
HISTORICAL COMMISSION			
Historical Commission—Personnel—Funds—Live in a Landmark Council	Walter Owens	Apr. 11	36
HOSPITALS			
County—County Hospital—Operate Ambulance Service	Richard H. Poellnitz	Apr. 26	142
Hospital—May Be Named in Honor of Living Physician	Winston V. Legg, Jr.	May 9	159
Hospitals—Mental Health—Etowah County	Wayne Copeland	May 24	194
HOUSING AUTHORITIES			
Housing Authorities—Regional Housing Authorities	E. S. Enoch	Apr. 16	148
— I —			
INDUSTRIAL DEVELOPMENT BOARDS			
Taxation—Motor Vehicles—Industrial Development Boards	James E. Witherington	Apr. 11	124
Industrial Development Board—Not Sell Property to Chairman	Brent Barrontine	Apr. 12	127
Cities—Transfer Property to Industrial Development Board	Clarence F. Rhea	June 11	189

Fair Market Value—Not Include Accretion of Value—Industrial Site Preparation	Jacob Walker, Jr.	June 11	186
Clarke County—Industrial Development Boards—Jury Commission—Office of Profit	John E. Adams	June 29	198
City of Fort Payne—Industrial Development Boards—Municipalities—Public Works	Fred W. Purdy	June 29	199
INSURANCE			
Historic Chattahoochee Commission Employees—Not Eligible for State Employees' Insurance Program	Douglas C. Purcell	June 11	188
— J —			
JAILS			
City Policemen—Serve as Watchmen of Jail	William Anglin	June 11	184
JUDGES OF PROBATE			
Elections—Probate Judges—Vacancies	Don Siegelman	May 24	Secretary of State
License Inspector—Not be Employed as Clerk—Probate Office	John W. Jones, Jr.	May 31	118
Supernumerary Probate Judge—Relinquish Supernumerary Position—Accept Another County Office	Estes R. Flynt	Apr. 11	115
Probate Judge—Eminent Domain/Condemnation—Municipalities—City of Decatur	Bobby Day	Apr. 11	121
Adopting Parents—Natural Parents—See Probate Records in Adoption Proceedings	John W. Jones, Jr.	Apr. 11	118

Subject	Address	Date	File
JUDICIAL COMPENSATION COMMISSION			
Counties—Courts—Judicial Compensation Commission	Hiram Pitts	May 25	99
Clarke County—Industrial Development Board—Jury Commission—Office of Profit	John E. Adams	June 29	198
JURORS AND JURIES			
Juror Qualification Questionnaires—Public Records	Ruth L. Moon	Apr. 12	151
JUVENILES			
Toxicology—Education—Juveniles	Carlos L. Rabren	May 3	Toxicology
— L —			
LANETT, CITY OF			
City of Lanett—Annexation	Claud E. McCoy	May 16	162
LAW ENFORCEMENT OFFICERS			
City Policemen—Serve as Watchman of Jail	William Anglin	June 11	184
Deputy Sheriff—Be Employed as Part-time Policeman	David M. Ensley	June 11	187
LICENSE INSPECTOR			
License Inspector—Not be Employed as Clerk—Probate Office	John W. Jones, Jr.	May 31	118
LICENSES			
Nursing Board—Authorized to Regulate	Seth Hammett	Apr. 11	60

Licensed Practical Nurses			
State Fire Marshal—Adopt Federal Mobile Home Standards	Albert J. Winfield	Apr. 26	Insurance
Banks—Licenses—Taxation	Velma B. Hosey	May 17	168
LIMESTONE COUNTY			
Hospital—May be Named in Honor of Living Physician	Winston V. Legg, Jr.	May 9	159
LOCAL LEGISLATION			
County—Not work on Private Roads	Bruce Gargis	Apr. 26	15
County—Not Work on Private Roads	Jimmy Byars	Apr. 26	98
County—Not Work on Private Roads	Jasper Fielding	Apr. 26	100
County—Not Work on Private Roads	John H. Armstrong	Apr. 26	129
Exemption—County—Cosmetology Act—Prohibited	Billie K. Jehle	May 24	Cosmetology
— M —			
MACON COUNTY			
Macon County—No Authority to Levy and Distribute Tax on Wine	Ernestine S. Sapp	May 3	156
MEDICAID			
Medicaid—Not Pay for Chiropractic Services	Jack E. Worthington	June 29	Medical Service Adm.
MEDICAL SERVICES ADMINISTRATION			
Medicaid—Not Pay for Chiropractic Services	Jack E. Worthington	June 29	Medical Service Adm.

Subject	Address	Date	File
MENTAL HEALTH			
Calhoun County—Health Department—Mental Health Centers	Jack D. Boozer	May 24	172
Hospitals—Mental Health—Etowah County	Wayne Copeland	May 24	194
MOBILE HOMES			
State Fire Marshal—Adopt Federal Mobile Home Standards	Albert J. Winfield	Apr. 26	Insurance
MONROEVILLE, CITY OF			
Building Permits—City of Monroeville—Subdivisions	B. C. Hornaday	June 29	195
MOTOR VEHICLES			
Taxation—Motor Vehicles—Industrial Development Boards	James E. Witherington	Apr. 11	124
Transported Limestone—Exempt Commodity	Juanita W. McDaniel	Apr. 26	Public Service Adm.
MUNICIPALITIES			
Contracts—Fire Districts—Municipalities	Patrick H. Boone	June 29	200
City of Fort Payne—Industrial Development Board—Municipalities—Public Works	Fred W. Purdy	June 29	199
	— N —		
NARCOTICS			
Funds—ABC Board—Purchase Illegal Drugs	Jimmy Evans	May 16	161

NON-PROFIT ORGANIZATION

City Board of Education—Convey Property to Non-Profit Organization—For Adequate Consideration	Jerry Batts	Apr. 26	137

NURSING, BOARD OF

Nursing Board—Authorized to Regulate Duties of Licensed Practical Nurses	Seth Hammett	Apr. 11	60
Board of Nursing—Scholarships—Proration	Betty Tomlin	Apr. 11	Nursing Board

— O —

OFFICERS AND OFFICES

Supernumerary Probate Judge—Relinquish Supernumerary Position—Accept Another County Office	Estes R. Flynt	Apr. 11	115
Town Council Member—Be Appointed to Gas and Water Board—Not Serve as Deputy Coroner	William J. Murray	June 11	185
Expenses—Compensation—Officers and Offices	Bettye Frink	June 11	Auditor
Historic Chattahoochee Commission Employees—Not Eligible for State Employees' Insurance Program	Douglas C. Purcell	June 11	188

OFFICES OF PROFIT

Clarke County—Industrial Development Board—Jury Commission—Offices of Profit	John E. Adams	June 29	198

Subject	Address	Date	File
OPELIKA, CITY OF			
City of Opelika—Contribute Funds to Auburn University—Capital Improvement	Guy Thompson	June 11	192
OPTIONS			
Fair Market Value—Not Include Accretion of Value—Industrial Site Preparation	Jacob Walker, Jr.	June 11	186
ORDINANCES			
Phenix City—Planning and Zoning—Ordinances	John M. Franklin	Apr. 11	123
Planning and Zoning—Ordinances—City of Russellville	William M. Bouldin	Apr. 26	136
— P —			
PARDONS AND PAROLES			
Authority to Pardon or Parole—County Inmate—Vested in State Board of Pardons and Paroles	H. Clemons Roe	Apr. 11	120
PARKS AND RECREATION			
County and/or City—Render Service for Parks and Recreation Facility	Hugh Herring	May 3	149
PENSIONS AND SECURITY			
Personal Property—Place on State Department Inventory	Gary Cooper	May 17	Pensions & Security

PHENIX CITY, CITY OF

Phenix City—Planning and Zoning—Ordinances	John M. Franklin	Apr. 11	123

PHYSICIANS

Hospital—May be Named in Honor of Living Physician	Winston V. Legg, Jr.	May 9	159

PLANNING COMMISSION

City of Robertsdale—Planning Commission—Subdivisions	Robert M. Tyson, Jr.	May 31	180

PLANNING AND ZONING

Planning and Zoning—City of Prichard	Luberta W. Portis	May 3	150
Phenix City—Planning and Zoning—Ordinances	John M. Franklin	Apr. 11	123
Planning and Zoning—Ordinances—City of Russellville	William M. Bouldin	Apr. 26	136

POLICE

Deputy Sheriff—Be Employed as Part-time Policeman	David M. Ensley	June 11	187

POLLARD, CITY OF

City of Pollard—State Comptroller—Taxation	Curtis Finley	May 17	169

PRICHARD, CITY OF

Planning and Zoning—City of Prichard	Luberta W. Portis	May 3	150

Subject	Address	Date	File
PRISONS AND PRISONERS			
Prisons and Prisoners—Work Release	Thomas H. Benton	Apr. 26	134
Sheriffs—Prisons and Prisoners—Work Release	Robert M. Field	Apr. 26	133
Prisons and Prisoners—Search and Seizures—Proctoscopic Examinations	R. G. Britton	May 31	Corrections
Authority to Pardon or Parole—County Inmate—Vested in State Board of Pardons and Parole	H. Clemons Roe	Apr. 11	120
Prisons and Prisoners—Confidentiality of Inmates' Files	R. G. Britton	June 11	Corrections
PRIVATE PROPERTY			
County—Not Work on Private Roads	Bruce Gargis	Apr. 26	15
County—Not Work on Private Roads	Jimmy Byars	Apr. 26	98
County—Not Work on Private Roads	Jasper Fielding	Apr. 26	100
County—Not Work on Private Roads	John H. Armstrong	Apr. 26	129
City Clean Drains—Rights-of-Way Crossing Private Property	Sam Stewart	May 31	176
PRIVATE WORK			
Funds—City of Graysville—Private Work	Maurice C. West	June 11	182
PROPERTY			
Personal Property—Place on State Department Inventory	Gary Cooper	May 17	Pensions & Security
Owner of Property—October 1—Liable for Ad Valorem Taxes for Tax Year	Sara R. McMullen	May 24	174

Cities—Transfer Property to Industrial Development Board	Clarence F. Rhea	June 11	189
PRORATION			
Board of Nursing—Scholarships—Proration	Betty Tomlin	Apr. 11	Nursing Board
PUBLIC RECORDS			
Adopting Parents—Natural Parents—See Probate Records in Adoption Proceedings	John W. Jones, Jr.	Apr. 11	118
City of Auburn—Public Records— Fees	Arnold W. Umbach, Jr.	Apr. 26	141
Juror Qualification Questionnaires—Public Records	Ruth L. Moon	Apr. 12	151
PUBLIC SERVICE COMMISSION			
Transported Limestone—Exempt Commodity	Juanita W. McDaniel	Apr. 26	PSC
Public Service Commission—Jurisdiction—Intrastate for-hire Carrier by Water	Juanita W. McDaniel	May 3	PSC
PUBLIC WORKS			
City of Fort Payne—Industrial Development Board—Municipalities—Public Works	Fred W. Purdy	June 29	199
— R —			
REAL ESTATE COMMISSION			
Real Estate Licensee—Not use Inducements to Secure Clients	Mary Goodwin	May 24	Real Estate Comm.
Commission may require real estate licensee to advertise as licensed	Mary L. Goodwin	June 6	Real Estate Comm.

Subject	Address	Date	File
REAPPRAISAL PROGRAM			
Ad Valorem Tax—Reappraisal—Taxation	H. B. Wise	Apr. 26	143
RECORDS			
Voter Registration Applications—Public Records—May be Destroyed After Microfilming	Clarence Nance	May 31	177
REGIONAL HOUSING AUTHORITIES			
Housing Authorities—Regional Housing Authorities	E. S. Enoch	Apr. 16	148
REGISTRARS			
Voter Registration Applications—Public Records—May be Destroyed After Microfilming	Clarence Nance	May 31	177
REGULATIONS	Seth Hammett	Apr. 11	60
Board of Nursing—Authorized to Regulate Duties of Licensed Practical Nurses			
RETAINAGE			
Highway Department—Retainage—Escrow	Rex K. Rainer	Apr. 26	Highway
RETIREMENT SYSTEMS			
Sheriffs—Retirement Systems—Deductions	Robert H. Kirksey	Apr. 11	76

Teachers—Principal—Attend Meetings—No Loss of leave or Pay	David G. Bronner	May 3	Retirement
Teacher's Retirement System—Tax Assessor	Wayland Cooley	June 11	183
REVENUE, DEPARTMENT OF			
Competitive Bid Law—Contracts—Revenue Department—Computers	Ralph P. Eagerton, Jr.	June 27	Revenue
RIGHTS OF WAY			
City Clean Drains—Rights-of-way Crossing Private Property	Sam Stewart	May 31	176
ROADS AND BRIDGES			
County—Not Work on Private Roads	Jasper Fielding	Apr. 26	100
County—Not Work on Private Roads	John H. Armstrong	Apr. 26	129
County Commission—Roads and Bridges—Equipment	Robert H. Kirksey	Apr. 26	76
Highway Department—Not Required to Maintain County Roads	Mike Weeks Robert Hall Don Harrison William B. Dunn	May 16	163
ROBERTSDALE, CITY OF			
City of Robertsdale—Planning Commission—Subdivisions	Robert M. Tyson	May 31	180
RUSSELLVILLE, CITY OF			
Planning and Zoning—Ordinances—City of Russellville	William M. Bouldin	Apr. 26	136

Subject	Address	Date	File
	— S —		
SALARIES			
Barbour County—Salaries—Sheriffs	J. Gorman Houston, Jr.	May 16	165
Superintendent—Not Retain Teachers' Regular Monthly Salary	Joe R. Carothers, Jr.	June 29	197
District Attorneys—Funds—Salaries	Robert E. Morrow	June 29	201
Judges—District Courts—Salaries—Walker County	Horace H. Nation, III	June 11	191
SALES TAX			
Exemptions—Sales Tax—Taxation	George D. H. McMillan, Jr.	May 24	Lt. Gov.
SCHOLARSHIPS			
Board of Nursing—Scholarships—Proration	Betty Tomlin	Apr. 11	Nursing Board
SCHOOLS			
Special Education—Classroom Facilities Discussed	J. Carlton Smith	Apr. 25	167
SEARCH AND SEIZURE			
Prisons and Prisoners—Search and Seizures—Proctoscopic Examinations	R. G. Britton	May 31	Corrections
SHERIFFS			
Sheriffs—Retirement System—Deductions	Robert H. Kirksey	Apr. 11	76
Etowah County—Sheriff—Compensation	Jack Floyd	Apr. 11	119
Sheriff—Not Designate Wife as Guard	Roy C. Snead, Jr.	Apr. 2	126

Sheriffs—Prisons and Prisoners—Work Release	Robert M. Field	Apr. 26	133
Employees—Sheriffs—Tuscaloosa County	Beasor B. Walker	Apr. 26	135
Deputy Sheriff—Elections—Merit Systems	Beasor B. Walker	Apr. 26	135
Barbour County—Salaries—Sheriffs	J. Gorman Houston, Jr.	May 16	165
Executions—Sheriffs—Costs	Ralph P. Eagerton, Jr.	May 3	Revenue
Bibb County—Sheriffs—Expense Allowance	Glenn M. Smitherman	May 24	173
Sheriff—Not Return Pistol on Plea of Guilty	James Earl Johnson	May 24	140
Deputy Sheriff—Be Employed as Part-time Policeman	David M. Ensley	June 11	187
SOCIAL WORK EXAMINERS, BOARD OF			
"Licensed Bachelor Social Worker"—Be Appointed to Board of Social Work Examiners	H. Stuart Chappell	Apr. 26	158
STATE HEALTH PLANNING AND DEVELOPMENT OFFICE			
Governor—State Health Planning and Development Office	Fob James	May 3	Governor
SUBDIVISIONS			
City of Robertsdale—Planning Commission—Subdivisions	Robert M. Tyson, Jr.	May 31	180
Building Permits—City of Monroeville—Subdivisions	B. C. Hornaday	June 29	195

Subject	Addressee	Date	File
SUPERNUMERARY STATUS			
Supernumerary Probate Judge—Relinquish Supernumerary Position—Accept Another County Office	Estes R. Flynt	Apr. 11	115
Supernumerary Status—Tax Assessor—Tax Collector	Fred Dykes, Jr.	Apr. 26	139
— T —			
TALLADEGA COUNTY			
ABC Board—Beer Tax—Talladega County	John A. Teague	May 24	170
TAX ASSESSORS			
Supernumerary Status—Tax Assessors—Tax Collector	Fred Dykes, Jr.	Apr. 26	139
Ad Valorem Tax—Curtilage—Tax Assessor	Dorothy S. Carmichael	Apr. 26	144
Ad Valorem Taxes—Tax Assessors	W. P. Farrar	May 16	164
Teacher's Retirement System—Tax Assessor	Wayland Cooley	June 11	183
TAXATION			
Taxation—Motor Vehicles—Industrial Development Boards	James E. Witherington	Apr. 11	124
Ad Valorem Tax—Reappraisal—Taxation	H. B. Wise	Apr. 26	143
Macon County—No Authority to Levy and Distribute Tax on Wine	Ernestine S. Sapp	May 3	156

Banks—Licenses—Taxation	Velma B. Hosey	May 17	168
Exemptions—Sales Tax—Taxation	George D. H. McMillan, Jr.	May 24	Lt. Gov.
Winston County—Taxation—Health Facilities	Hobson Manasco, Jr.	May 31	181
City of Pollard—State Comptroller—Taxation	Curtis Finley	May 17	169
TAX COLLECTOR			
Supernumerary Status—Tax Assessor—Tax Collector	Fred Dykes	Apr. 26	139
TEACHERS			
Teachers—Principal—Attend Meetings—No Loss of Leave or Pay	David G. Bronner	May 3	Retirement
Superintendent—Not Retain Teacher's Regular Monthly Salary	Joe R. Carothers, Jr.	June 29	197
TOXICOLOGY			
Toxicology—Education—Juveniles	Carlos L. Rabren	May 3	Toxicology
TRANSPORTATION			
Public Service Commission—Jurisdiction Intrastate for-hire Carriers by Water	Juanita W. McDaniel	May 3	PSC
TUSCALOOSA COUNTY			
Employees—Sheriffs—Tuscaloosa County	Beasor B. Walker	Apr. 26	135
— V —			
VACANCIES			
Elections—Probate Judges—Vacancies	Don Siegelman	May 24	Secretary of State

Subject	Addressee	Date	File
VOTER REGISTRATION			
Voter Registration Applications—Public Records—May Be Destroyed After Microfilming	Clarence Nance	May 31	177
— W —			
WAGES			
Withholding Tax—Wages—Etowah County	Ralph P. Eagerton, Jr.	Apr. 11	Revenue
WALKER COUNTY			
Circuit Clerks—Compensation—Walker County	Sylvester Anton	Apr. 26	130
Judges—District Courts—Salaries—Walker County	Horace H. Nation, III	June 11	191
WATER			
Public Service Commission—Jurisdiction—Intrastate For-Hire Carriers by Water	Juanita W. McDaniel	May 3	PSC
WATER IMPROVEMENT COMMISSION			
Water Improvement Commission Member—Not Also Serve on Board of Equalization	John M. McMillan, Jr.	Apr. 26	132
Water Improvement Commission Member—Not Also Serve on Board of Equalization	Robert Gulledge	Apr. 26	131

WINSTON COUNTY			
Winston County—Taxation—Health Facilities	Hobson Manasco, Jr.	May 31	181
WITHHOLDING TAX			
Withholding Tax—Wages—Etowah County	Ralph P. Eagerton, Jr.	Apr. 11	Revenue
WORK RELEASE			
Prisons and Prisoners—Work Release	Thomas H. Benton	Apr. 26	134
Sheriffs—Prisons and Prisoners—Work Release	Robert M. Field	Apr. 26	133
— Y —			
YOUTH SERVICES BOARD			
Private Non-Profit Corporation—Build Chapel—Donate to State Agency	George M. Phyfer	Apr. 26	Youth Services